

8
No. 87-1729

Supreme Court, U.S.
FILED
JAN 5 1989

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1988

CAPLIN & DRYSDALE, CHARTERED,
Petitioner

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX

*PETER VAN N. LOCKWOOD
GRAEME W. BUSH
ALBERT G. LAUBER, JR.
JULIA L. PORTER
ROBERT L. COHEN

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Counsel for Respondents

PETITION FOR WRIT OF CERTIORARI FILED APRIL 11, 1988
CERTIORARI GRANTED NOVEMBER 7, 1988

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

Crim. No. 85-00010-A

UNITED STATES OF AMERICA,
v.

CHRISTOPHER F. RECKMEYER, II, *et al.*

RELEVANT DOCKET ENTRIES

1985	
Jan. 9	INDICTMENT—filed.
Jan. 25	NOTICE of receipt of funds from the deft.—filed.
Mar. 7	NOTICE returnable 3-15-85 together with MOTION for an order modifying restraining order of 1-14-85 and excluding attorney fees and costs from forfeiture with MEMO in support of same—filed by Christopher F. Reckmeyer.
Mar. 15	OPPOSITION to defense counsel's motion for modification of restraining order—filed by U.S.
Mar. 15	ORDER denying deft. Motion for a modification of restraining order. Entered and filed. Copies sent. (AVB).
Mar. 22	RESTRAINING ORDER of 1-14-85 unsealed by AVB filed.
May 17	CONSENT Decree for forfeiture and ORDER—filed.

June 17 CLAIM of interest in forfeited property and petition for hearing to adjudicate validity of claimed interest—filed by Caplin & Drysdale.

Oct. 18 CONSOLIDATED response to petitions for relief from forfeiture—filed by U.S.

Oct. 22 TRIAL PROCEEDINGS (J. Cacheris) Reporter: Farmer—Appearances of counsel. Response to be filed in 10 days. Arguments to be heard on 11-8-85.

Nov. 5 MEMO. in support of claim of interest in forfeited property and petition for hearing to adjudicate validity of claimed interest—filed by Caplin & Drysdale, Chartered.

Nov. 8 TRIAL PROCEEDINGS (J. Cacheris) Reporter: Farmer. This matter came on for arguments in re; forfeiture—arguments heard—taken under advisement. 1986

Mar. 27 ORDER and MEMORANDUM OPINION that the Orders of Forfeiture of 3-14-85, 5-17-85 and 6-5-85 are amended to reflect that the firm of Caplin & Drysdale has a legal right, title, and interest in the sum of \$170,512.99 out of the forfeited assets of Christopher Reckmeyer. Entered and filed. Copies sent. (JCC).

Mar. 27 CONSOLIDATED reply to petitioners' Memoranda on forfeiture—filed by U.S. on 11-7-85.

Mar. 28 NOTICE of appeal of Order of 3-27-86—filed by U.S. Copy of notice mailed to petitioners counsel. Copy of notice, order and docket entries mailed to U.S.C.A.

June 5 TRANSCRIPT of proceedings on 11-8-85—filed.

July 17 TRANSCRIPT of proceedings on 3-15-85—filed.

July 18 RECORD on appeal in 3 volumes mailed to U.S.C.A.
VOL. I—Pleadings (1-13).
VOL. II—Trans. of proc. on 11-8-85.
VOL. III—Trans. of proc. on 3-15-85.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 86-5050

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v.

CAPLIN & DRYSDALE, Chartered,
Claimant-Appellee;

and

CHRISTOPHER F. RECKMEYER, II and ROBERT BRUCE
RECKMEYER,
Defendants.

RELEVANT DOCKET ENTRIES

5/2/86 CRIMINAL case docketed. Fee status at case opening was us. (dsh) [86-5050]
5/8/86 DOCKETING NOTICE issued. (dsh) [86-5050]
5/15/86 DISCLOSURE statement filed by Appellee Caplin & Drysdale (n). (dsh) [86-5050]
5/15/86 COUNSEL of record form filed by Kent S. Robinson for Appellant U.S. (dsh) [86-5050]
5/20/86 COUNSEL of record form filed by Peter Van Norden Lockwood for Appellee Caplin & Drysdale. (dsh) [86-5050]
7/21/86 RECORD on appeal filed. (Pleadings: I T/S: II, III). (dsh) [86-5050]
7/25/86 CASE calendared for oral argument. (ski) [Entry date 8/19/86]. [86-5025 86-5050 86-5069]

8/20/86 MOTION filed by Appellant Leon Durwood Harvey in 86-5025 for additional argument time of 20 minutes [25176-1]. (dsh) [86-5025 86-5050 86-5069]
8/20/86 SUBMITTED to JDP, SJE, RFC, motion for additional argument time [25176-1] in 86-5025, 86-5050, 86-5069. (dsh) [86-5025 86-5050 86-5069] (dsh)
8/25/86 MOTION filed by American Bar Association to file amicus brief [25792-1]. (dsh) [86-5025 86-5050 86-5069]
8/25/86 MOTION filed by National Legal Aid and Defender Association to file amicus brief [25796-1]. (dsh) [86-5025 86-5050 86-5069]
8/25/86 SUBMITTED to JDP, SJE, RFC, motion to file amicus brief [25792-1] in 86-5025, 86-5050, 86-5069, motion to file amicus brief [25796-1] in 86-5025, 86-5050, 86-5069. (dsh) [86-5025 86-5050 86-5069]
8/26/86 SUBMITTED to panel, amicus curiae briefs conditionally submitted by American Bar Association and National Legal Aid & Defender Association. (dsh) [86-5025 86-5050 86-5069]
8/26/86 BRIEF filed by Appellee in 86-5050, Appellee in 86-5069. Type of Service: HD, Copies: 12. (w/reply brief for Harvey in 86-5025). (sec) [Entry date 8/27/86] [86-5025 86-5050 86-5069]
8/29/86 MOTION for consent to file amicus brief on behalf of National Association of Criminal Defense Lawyers (NACDL) filed. (dsh) [86-5050 86-5069]
8/29/86 MOTION filed by New York Criminal Bar Association to file amicus brief [26555-1]. (dsh) [86-5025 86-5050 86-5069]

8/29/86 MOTION filed by National Association of Criminal Defense Lawyers (NACDL) and Maryland Criminal Defense Attorneys' Association (MCDAA) to f amicus brief [26556-1]. (dsh) [86-5025 86-5050 86-5069]

8/29/86 CLERK order filed denying motion for additional argument time [25176-1] in 86-5025, 86-5050, 86-5069. Copies to attorney for Appellant in 86-5025, attorney for Appellee in 86-5025, attorney for Appellee in 86-5050, attorney for Appellant in 86-5050, attorney for Appellee in 86-5069, attorney for Appellant in 86-5069. (dsh) [86-5025 86-5050 86-5069]

8/29/86 CLERK order filed granting motion to file amicus brief [25796-1] in 86-5025, 86-5050, 86-5069. Copies to all parties. (dsh) [86-5025 86-5050 86-5069]

8/29/86 CLERK order filed granting motion to file amicus brief [25792-1] in 86-5025, 86-5050, 86-5069. Copies to all parties. (dsh) [86-5025 86-5050 86-5069]

8/29/86 MOTION filed by Appellee US in 86-5025, Appellant US in 86-5050, Appellant US in 86-5069 to file oversize brief of 44 pages [26851-1]. (dsh) [Entry date 9/2/86] [86-5025 86-5050 86-5069]

8/29/86 SUBMITTED to JDP, SJE, RFC, motion to file oversize brief [26851-1] in 86-5025, 86-5050, 86-5069. Chapman's copy was not mailed to him will be hand-delivered by WTC at argument. (dsh) [Entry date 9/2/86] [86-5025 86-5050 86-5069]

9/4/86 ORAL argument heard. Courtroom Deputy: wtc (dsh) [Entry date 9/29/86] [86-5025 86-5050 86-5069]

9/5/86 REPLY brief filed by Appellant in 86-5050, Appellant in 86-5069. Type of Service: G, Copies: 12. (sec) [Entry date 9/10/86] [86-5025 86-5050 86-5069]

10/31/86 MOTION filed by Appellant Leon Durwood Harvey in 86-5025, Appellee Caplin & Drysdale in 86-5050, Appellee Clarence Meredith in 86-5069, Appellee Ronald Burnell Bassett in 86-5069 to file supplemental brief [37452-1]. [86-5025, 86-5050, 86-5069] (dsh) [86-5025 86-5050 86-5069]

10/31/86 SUBMITTED to JDP, SJE, RFC, motion to file supplemental brief [37452-1] filed by Appellee Ronald Burnell Bassett, Clarence Meredith, Caplin & Drysdale, Appellant Leon Durwood Harvey in 86-5025, 86-5050, 86-5069 and add'l documents: condit. submitted supp. brief. (dsh) [86-5025 86-5050 86-5069]

11/6/86 COURT order filed by JDP, SJE, RFC granting motion to file supplemental brief [37452-1] filed by Appellee Ronald Burnell Bassett, Clarence Meredith, Caplin & Drysdale, Appellant Leon Durwood Harvey in 86-5025, 86-5050, 86-5069. Copies to all counsel. [86-5025, 86-5050, 86-5069] (dsh) [86-5025 86-5050 86-5069]

11/6/86 SUPPLEMENTAL brief filed by Amicus Curiae in 86-5025, Appellant in 86-5050, Appellant in 86-5069. type of Service: G, copies of brief: 12. (eac) [Entry date 11/7/86] [86-5025 86-5050 86-5069]

11/17/86 SUPPLEMENTAL brief filed by Appellee Caplin & Drysdale in 86-5050, Appellee Clarence Meredith in 86-5069, Appellant Leon Durwood Harvey in 86-5025 in response to supplemental brief of the United States. Type of Service: mail copies: 12 (dsh) [Entry date 11/24/86] [86-5025 86-5050 86-5069]

3/6/87 AUTHORED opinion (P) filed. Panel: JDP, SJE, RFC; Decision: affirmed. [86-5025, 86-5050, 86-5069] (dsh) [86-5025 86-5050 86-5069]

3/6/87 JUDGMENT order filed. (su) [Entry date 3/8/87] [86-5050]

3/18/87 PETITION filed by Appellant US to extend time to file petition for rehearing [65482-1]. [86-5050] (dsh) [86-5050]

3/18/87 CLERK order filed granting motion to extend time to file pet. reh. [65482-1] filed by Appellant US. Copies to Peter Van Norden Lockwood for Appellee Caplin & Drysdale, Kent S. Robinson for Appellant US. [86-5050] (dsh) [86-5050]

4/20/87 PETITION filed by Appellant US for rehearing [74729-1], for suggestion for rehearing en banc [74729-2]. [86-5050] (dsh) [Entry date 4/24/87] [86-5050]

4/23/87 RESPONSE to US petition for rehearing and suggestion for rehearing en banc requested of Appellee Caplin & Drysdale on or before 05/03/87. [86-5050] (dsh) [Entry date 4/24/87] [86-5050]

5/4/87 RESPONSE [77663-1] to motion for suggestion for reh. en banc [74729-2], motion for rehearing [74729-1] filed by Appellee Caplin & Drysdale. [86-5050] (dsh) [Entry date 5/6/87] [86-5050]

6/11/87 COURT order filed by En Banc court granting motion for rehearing en banc [74729-2], granting motion for rehearing (copies to all parties) 86-5050. (dsh)

6/11/87 CASE reopened. [86-5050] (sgp) [Entry date 2/23/88] [86-5050]

7/14/87 CASE tentatively calendared for oral argument. Term: October, Place: Richmond. [86-5050] (ski) [86-5050]

8/12/87 CASE calendared for oral argument. [86-5050] (ski) [86-5050]

8/12/87 Motion filed by National Association of Criminal Defense Lawyers to participate in oral argument [166542-1]. [86-5050] (dsh) [86-5050]

10/6/87 ORAL argument heard. Courtroom Deputy: WTC. [86-5050] (wtc) [86-5050]

12/7/87 SUPPLEMENTAL authorities (FRAP 28(j)) filed by Appellee [423345-1] [86-5050] (dad) [Entry date 12/8/87] [86-5050]

12/30/87 SUPPLEMENTAL authorities (FRAP 28(j)) filed by Appellant [469873-1] [86-5050] (dad) [86-5050]

1/11/88 AUTHORED opinion (P) filed. Panel: JHW, Writing Judge, DSR, KKH, HEW, Concurring Judge, FDM, Concurring Judge, RFC, WWW, JDP, Dissenting Judge; HLW, Dissenting Judge; JMS, Dissenting Judge; SJE, Dissenting Judge; Decision: reversed. [86-5050] (dsh) [Edit date 1/11/88] [86-5050]

1/11/88 JUDGMENT order filed. [86-5050] (dsh) [86-5050]

2/1/88 MANDATE issued. [86-5050] (emb) [86-5050]

2/1/88 RECORD on appeal returned to USDC at EDVA-Alexandria. (Pleadings: Volume I T/S: Volumes II-III). [86-5050] (emb) [86-5050]

3/7/88 FEDERAL Reporter Citation: 837 F.2d 637. [86-5050] (elf) [Entry date 3/16/88]. [86-5050]

4/26/88 SUPREME Court notice received of filing of petition for certiorari on 04/11/88. Supreme Court No. 87-1729. [86-5050] (cw) [Entry date 5/16/88] [86-5050]

IN THE UNITED STATES DISTRICT COURT FOR THE-
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CRIMINAL NO. 85-00010-A

UNITED STATES OF AMERICA
v.

CHRISTOPHER FREDERICK RECKMEYER, II

a/k/a "The Boss"

a/k/a "The Rug Man"

a/k/a "Big Brother"

ROBERT BRUCE RECKMEYER

a/k/a "Little Brother"

a/k/a "Robo"

a/k/a "Blondie"

BRUCE WAYNE THOMASON

a/k/a "Loose Bruce"

a/k/a "Troy Clayton"

PATRICIA L. RECKMEYER *et al.*

UNDER SEAL ORDER

This matter having come before the Court on an *Ex Parte* Motion of the United States of America for a restraining order pursuant to Title 21, United States Code, Section 848(d) and the Comprehensive Crime Control Act of 1984, Pub. L. 98-473, Section 413, which provide for jurisdiction to enter restraining orders and take such other actions as the Court shall deem necessary in connection with any property or other interest subject to forfeiture pursuant to Title 21, United States Code, Section 848(a);

The Court finds that if the Government were required to give notice of this action to the interested parties, said

parties, their agents, servants, employees, attorneys and those in active concert or participation with them, might place certain property beyond the jurisdiction of this Court or otherwise detrimentally affect the Government's interest in such property, thereby frustrating the ends of justice and causing irreparable harm to the United States by defeating the jurisdiction of this Court over such property.

This Court further finds that, if this Court fails to enter this Order as prayed for by the United States, that

CHRISTOPHER FREDERICK RECKMEYER, II

a/k/a "The Boss"

a/k/a "The Rug Man"

a/k/a "Big Brother"

ROBERT BRUCE RECKMEYER

a/k/a "Little Brother"

a/k/a "Robo"

a/k/a "Blondie"

GREGORY ALAN JARRETT

a/k/a "Scott"

a/k/a "Wild Man"

STEPHEN KING WORTH

a/k/a "Patrick Nelson Pine"

a/k/a "Patrick Bartley"

a/k/a "Hippy Steve"

BRUCE WAYNE THOMASON

a/k/a "Loose Bruce"

a/k/a "Troy Clayton"

THOMAS L. TUCKER

a/k/a "Thomas E. Hawkins"

PATRICK RYON HENDRY

LEON D. HARVEY a/k/a "Smiles"

PATRICIA L. RECKMEYER

JAMES SAMUEL ADAMS

DOUGLAS CRAIG COCHRAN

DAVID WINDSOR COOK

CHARLES ARTHUR FRIEND, III

a/k/a "Carlos"

TIMOTHY PATRICK RUDDY

a/k/a "Douglas Paul Harrison"

a/k/a "Richard Dale Andrews"

ANDREW JAMES MEYERS

a/k/a "Carl"

JOHN CHRISTOPHER ROBINSON

a/k/a "Chris Robertson"

WILLIAM HARRIS SHARPE

a/k/a "John Raymond Pavlovic"

a/k/a "William Schaffer"

a/k/a "William Stewart Sharpe"

a/k/a "William Simpson"

a/k/a "J. R. Shaffer"

a/k/a "William Harris"

CHARLES ANTHONY SWEENEY

a/k/a "David Eugene Reich"

a/k/a "Tony"

THOMAS WALLACE ASHTON

SALVATORE F. VASTOLA

a/k/a "Sal"

CRAIG DOUGLAS SMITH

a/k/a "Donald Fisher"

a/k/a "Smitty"

STEPHEN SCOTT JOHNSON

a/k/a "Joseph Scott Henderson"

a/k/a "Dan Bowen"

RICHARD FRANCIS VAUGHN

DONALD SHIRACK

a/k/a "Don Shipley"

a/k/a "Danial Shipley"

FRANCOISE NASTA
a/k/a "Frankie"

JAN RICHARD GILLIE

William J. Reckmeyer, Sr.

Elizabeth A. Reckmeyer

Nancy L. Reckmeyer

Marionlee Thomason

Charles E. Lane

Jean E. Lane

Richard K. Swensen

Kristen E. Swensen

Michael J. Kapper

Carol Thomason Hile

William Pruzan

Pnina Pruzan

Mark B. Newman

Joanna V. Newman

Brett C. Leavenworth

Kevin Goeller

Patricia L. Goeller

Ross W. Thomason

Lorraine Thomason

Franklin Life Insurance Company

Sovran Bank

Bank of New York

Merrill, Lynch, Pierce, Fenner & Smith, Inc.

First Virginia Bank

Dominion National Bank of Virginia

Riggs National Bank

The Calvert Group First Variable Rate Fund
Crancy's, Inc.

Organic Foods, Inc.

Unlimited Investments, Inc.

B.C.P., Inc.

United Trade, Inc.

Atlantis Stone Corporation

American Deli, Inc.

Mainland Carpets, Inc.

and their agents, servants, employees, attorneys, family members, and those persons in active concert or participation with them, might place certain property beyond the jurisdiction of this Court or otherwise detrimentally affect the Government's interest in such property, thereby frustrating the ends of justice and causing irreparable harm to the United States by defeating the jurisdiction of this Court over such property. Accordingly, it is hereby:

ORDERED, ADJUDGED, and DECREED that,

CHRISTOPHER FREDERICK RECKMEYER, II

a/k/a "The Boss"

a/k/a "The Rug Man"

a/k/a "Big Brother"

ROBERT BRUCE RECKMEYER

a/k/a "Little Brother"

a/k/a "Robo"

a/k/a "Blondie"

GREGORY ALAN JARRETT

a/k/a "Scott"

a/k/a "Wild Man"

STEPHEN KING WORTH

a/k/a "Patrick Nelson Pine"

a/k/a "Patrick Bartley"

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a/k/a "Loose Bruce"

a/k/a "Troy Clayton"

THOMAS L. TUCKER

a/k/a "Thomas E. Hawkins"

PATRICK RYON HENDRY

LEON D. HARVEY

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CHARLES ARTHUR FRIEND, III

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a/k/a "Douglas Paul Harrison"

a/k/a "Richard Dale Andrews"

ANDREW JAMES MEYERS

a/k/a "Carl"

JOHN CHRISTOPHER ROBINSON

a/k/a "Chris Robertson"

WILLIAM HARRIS SHARPE

a/k/a "John Raymond Pavlovic"

a/k/a "William Schaffer"

a/k/a "William Stewart Sharpe"

a/k/a "William Simpson"

a/k/a "J. R. Shaffer"

a/k/a "William Harris"

CHARLES ANTHONY SWEENEY

a/k/a "David Eugene Reich"

a/k/a "Tony"

THOMAS WALLACE ASHTON

SALVATORE F. VASTOLA

a/k/a "Sal"

CRAIG DOUGLAS SMITH

a/k/a "Donald Fisher"

a/k/a "Smitty"

STEPHEN SCOTT JOHNSON

a/k/a "Joseph Scott Henderson"

a/k/a "Dan Bowen"

RICHARD FRANCIS VAUGHN

DONALD SHIRACK

a/k/a "Don Shipley"

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Nancy L. Reckmeyer

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Charles E. Lane

Jean E. Lane

Richard K. Swensen

Kristen E. Swensen

Michael J. Kapper

Carol Thomason Hile

William Pruzan

Pnina Pruzan

Mark B. Newman

Joanna V. Newman

Brett C. Leavenworth

Kevin Goeller

Patricia L. Goeller

Ross W. Thomason
 Lorraine Thomason
 Franklin Life Insurance Company
 Sovran Bank
 Bank of New York
 Merrill, Lynch, Pierce, Fenner & Smith, Inc.
 First Virginia Bank
 Dominion National Bank of Virginia
 Riggs National Bank
 The Calvert Group First Variable Rate Fund
 Crancy's, Inc.
 Organic Foods, Inc.
 Unlimited Investments, Inc.
 B.C.P., Inc.
 United Trade, Inc.
 Atlantis Stone Corporation
 American Deli, Inc.
 Mainland Carpets, Inc.

and their agents, servants, employees, attorneys, family members, and those persons in active concert or participation with them, be and are hereby,

ORDERED, PROHIBITED and ENJOINED from selling, assigning, pledging, distributing, encumbering, or otherwise disposing of, or removing from the jurisdiction of this Court or removing from any checking or savings account, or safe deposit box, all or any part of their interest, direct or indirect, in the following described property:

1. Condominium Unit Number M-48 in Estate Questa Verde, lying and being in Estate Hermon Hill, Company Quarter, Christianstead, St. Croix, U.S. Virgin Islands, together with 1.22366 per-

cent individual interest in the common areas and facilities so declared in the Declaration of Condominium to be appurtenant to the above-described condominium unit; and all rental and lease income from condominium Unit Number M-48.

2. A parcel of land containing 675.49 acres, more or less, with all improvements, structures, livestock, machinery and appurtenances thereto, known as the "Shelburne Glebe" located on the southeast side of Road No. 729 approximately 4.5 miles southwest of Leesburg, in Mercer Magisterial District, Loudoun County, Virginia, and more particularly described in the deed recorded in Deed Book 769 beginning at page 03 in the land records of Loudoun County, Virginia.

3. A parcel of land containing 50.19 acres with all improvements, structures, machinery, livestock and appurtenances thereto, located on the northwest side of Road No. 797 approximately 4.5 miles southwest of Leesburg, Mercer Magisterial District, Loudoun County, Virginia, and more particularly described in the deed recorded in Deed Book 788 beginning at page 759 in the land records of Loudoun County, Virginia.

4. A parcel of land containing 10.0 acres, with all improvements, structures, machinery, livestock and appurtenances thereto, located on the northwest side of Road No. 797, Mercer Magisterial District, Loudoun County, Virginia, and more particularly described in Schedule A of the deed recorded in Deed Book 795 beginning at page 45 in the land records of Loudoun County, Virginia.

5. A parcel of land containing 146.2785 acres, with all improvements, structures, machinery, livestock and appurtenances thereto, located ap-

proximately three miles south of Hamilton, Blue Ridge Magisterial District, Loudoun County, Virginia, and more particularly described in the deed recorded in Deed Book 805 beginning at page 336 in the land records of Loudoun County, Virginia and in a subsequent recording, as evidenced by the transfer of title to William J. Reckmeyer, Sr., father of CHRIS RECKMEYER, as recorded by deed in Deed Book 836 beginning at page 184 in the land records of Loudoun County, Virginia.

6. A parcel of land containing 38.961 acres, with all improvements, structures, machinery, live stock and appurtenances thereto, located near Mt. Gilead in Mercer Magisterial District, Loudoun County, Virginia, and more particularly described by a plat and survey of J. Horace Jarrett, C.L.S., dated August 17, 1982, a copy of which is attached to the deed recorded in Deed Book 819 beginning at page 860 in the land records of Loudoun County, Virginia.

7. A parcel of land containing 32.632 acres, with all improvements, structures, machinery, live stock and appurtenances thereto, located near the northwest side of Franklin Gibson Road in the Eighth Election District of Anne Arundel County, Maryland and more particularly described in a legal description attached to the deed recorded in Deed Book 3466 beginning at page 253 among the land records of Anne Arundel County, Maryland and in a subsequent recording, as evidenced by the transfer of title to Jim Adams, brother-in-law of ROBERT RECKMEYER, as recorded in Deed Book 3466 beginning at page 253 in the land records of Anne Arundel County, Maryland.

8. Any and all precious metals owned by or held on behalf of CHRIS RECKMEYER, ROBERT

ERT RECKMEYER and/or BRUCE THOMASON and the business entities which they each control and/or in which they hold any interest, including but not limited to: gold and silver bullion and coins, Baht gold jewelry, gold Canadian maple leaf coins, gold Krugerrand coins, gold and silver chains, and gold and silver bracelets.

9. Any and all precious gemstones owned by or held on behalf of CHRIS RECKMEYER, ROBERT RECKMEYER and/or BRUCE THOMASON and the business entities which they each control and/or in which they hold any interest, including but not limited to: golden sapphires, Burma rubies, Thailand rubies, emeralds, tanzanites, pink sapphires, diamonds and pearls.

10. Any and all oriental carpets and/or rugs, silk tapestries and/or rugs, furniture, chests, antiques, and lamps owned by or held on behalf of CHRIS RECKMEYER, ROBERT RECKMEYER and/or BRUCE THOMASON and the business entities which they each control and/or in which they hold any interest.

11. A deposit of \$2,500 held in escrow by Wellborn County Properties, Inc. for the purchase of 44.62 acres of land, including all improvements, located in Loudoun County, Virginia.

12. A January 6, 1984 promissory note payable to CHRIS RECKMEYER and Nancy Reckmeyer by William John Reckmeyer, Sr. in the amount of \$112,500 plus accrued interest.

13. All accounts receivable of CHRIS RECKMEYER payable by Michael J. Kapper.

14. Eight oriental carpets totalling 162 square feet belonging to CHRIS RECKMEYER and held

on consignment by Brett C. Leavenworth in Tucson, Arizona.

15. Any and all stock, assets and inventory of Unlimited Investments, Inc., a corporation in the State of Virginia, including but not limited to, all accounts at any financial institutions, typewriters, scales, file cabinets, safes and oval carpet.

16. Any and all of the shareholder and ownership interest of CHRIS RECKMEYER and Nancy L. Reckmeyer in B.C.P., Inc., a corporation in the State of California.

17. Any and all stock, financial, or other ownership interest of CHRIS RECKMEYER in American Deli, Inc., a corporation in the State of Florida.

18. A November 1983 promissory note in the amount of \$5,000 plus accrued interest payable to CHRIS RECKMEYER by Mark B. Newman, President of the American Deli, Inc.

19. Any and all stock, assets and inventory of Crancy's Inc., a corporation in the State of Virginia.

20. Any and all stock, assets and inventory of Organic Foods, Inc., a corporation in the State of Virginia.

21. Any and all stock, assets and inventory of Manpower Management, Inc., a corporation in the State of Virginia.

22. Any and all stock, assets and inventory of United Trade, Inc., a corporation in the State of Maryland, also doing business as "East West Design" in the State of Virginia.

23. Any and all stock, assets and inventory of Robert Bruce Products.

24. Any and all stock, assets and inventory of Atlantis Stone Corporation, a corporation in the State of Delaware.

25. Any and all stock, assets and inventory of Mainland Carpets, Inc., a corporation in the State of Virginia.

26. Any and all possessions of CHRIS RECKMEYER, ROBERT RECKMEYER and/or BRUCE THOMASON with a retail value of \$1,000 or more, including but not limited to, [currency], furniture, musical instruments, appliances, carpets, electronic devices, art objects, and antiques; including but not limited to such possessions located at the "Shelburne Glebe" in Loudoun County, Virginia and at 12900 Westbrook Drive, in Centreville, Virginia.

27. A 1973 Mercedes-Benz four door sedan, vehicle identification number 11406012004068.

28. A 1974 Chevrolet two door coupe, vehicle identification number 1L57H4Y126501.

29. A 1976 Chrysler four door sedan, vehicle identification number CM41N6D164365.

30. A 1979 Ford Pickup Truck, vehicle identification number F26HEEJ3709.

31. A 1978 Chevrolet four door station wagon, vehicle identification number CCL168F203822.

32. A 1974 Cadillac four door sedan, vehicle identification number 6B69R4Q172668.

33. A 1979 Chevrolet station wagon, vehicle identification number CCS269F109212.

34. A 1984 Chevrolet station wagon, vehicle identification number 1G8GC26M5EF107085.

35. A 1976 Cadillac four door sedan, vehicle identification number 6B69S6Q215574.

36. A 1984 Chevrolet station wagon, vehicle identification number 1G8GK26M4EF107548.

37. A 1984 Mercedes Benz four door sedan, vehicle identification number WDBAB33A4EA 038061.

38. A 1959 Mercedes Benz four door sedan, vehicle identification number 220S8513087.

39. Any and all personal and/or corporate ownership interest of CHRIS RECKMEYER, ROBERT RECKMEYER and/or BRUCE THOMASON in monies deposited by or on behalf of CHRIS RECKMEYER, ROBERT RECKMEYER and/or BRUCE THOMASON, and/or their corporations, to any and all personal and corporate pension plans, money purchase plans, keogh plans, individual retirement accounts, annuity contracts or any other retirement or profit sharing funds including, but not limited to, the following:

- a. Keogh Annuity Contracts numbers 4278206 and 4278207, each in the amount of \$7,500, and any accrued interest, in the names of CHRIS RECKMEYER and Nancy Reckmeyer issued by the Franklin Life Insurance Company of Springfield, Illinois;
- b. Sovran Bank account number 9381-2959 in the name of Crancy's, Inc. Money Purchase and Retirement Trust;
- c. Sovran Bank account number 9381-2946 in the name of Crancy's, Inc., Profit Sharing and Retirement Trust;

d. Bank of New York account number S 063795054246 as agent for Merrill Lynch account number 795-05424 in the name of Unlimited Investments, Inc., Money Purchase Plan;

e. Bank of New York account number S 063795054253 as agent for Merrill Lynch account number 795-05425 in the name of Unlimited Investments, Inc., Profit Sharing Plan;

f. Calvert Group First Variable Rate Fund account number 113-061-6 in the name of United Trade, Inc., Profit Sharing Plan;

g. Calvert Group First Variable Rate Fund account number 113062-4 in the name of United Trade, Inc. Money Purchase Plan;

40. Any and all personal and/or corporate ownership interest of CHRIS RECKMEYER, ROBERT RECKMEYER and/or BRUCE THOMASON in any monies deposited by or on behalf of CHRIS RECKMEYER, ROBERT RECKMEYER or BRUCE THOMASON, and/or their corporations, in any safe deposit boxes and in any and all personal checking accounts, corporate checking accounts, savings accounts and any other accounts including, but not limited to, the following:

- a. First Virginia Bank account number 8513-4120 in the name of CHRIS RECKMEYER and Nancy Reckmeyer;
- b. First Virginia Bank account number 0716-1433 in the name of Crancy's, Inc.;
- c. First Virginia Bank account number 0530-6728 in the name of Mainland Carpets, Inc.;

- d. First Virginia Bank account number 8846-0312 in the name of BRUCE THOMASON and Marionlee Thomason;
- e. First American Bank of Virginia account number 0624-4912 in the name of Unlimited Investments, Inc.;
- f. First American Bank of Virginia account number 0649-9198 in the name of Manpower Management, Inc.;
- g. Dominion National Bank of Virginia account number 4-250-280-1 in the name of Organic Foods, Inc.;
- h. Riggs National Bank account number 08-392-168 in the name of Atlantis Stone Corporation;
- i. Calvert Group First Variable Rate Fund account number 143-404-2-101 in the name of Atlantis Stone Corporation;
- j. Calvert Group First Variable Rate Fund account number 001-001132786 in the name of ROBERT RECKMEYER;
- k. Calvert Group First Variable Rate Fund account number 89251-3 in the name of United Trade, Inc.

41. Approximately \$195,180.16, derived from the 1983 sale by ROBERT RECKMEYER and PATRICIA RECKMEYER of a parcel of real property and all appurtenances thereto, said property being known as "Gibraltar Farm" and containing approximately 176 acres located in Fauquier County, Virginia; all proceeds from the 1983 sale of said property and all accrued interest on the aforesaid \$195,180.16 since its November 15, 1983 seizure by the United States of America.

IT IS HEREBY ORDERED that this Order shall be served forth with upon all parties named above and shall remain in effect until such time as the Government's rights to said property can be fully determined at a trial of this case on the merits and until the conclusion of all appeals taken by the Government and/or CHRISTOPHER F. RECKMEYER, II, ROBERT BRUCE RECKMEYER or BRUCE WAYNE THOMASON.

UNITED STATES DISTRICT JUDGE

Alexandria, Virginia

Date: 1/14/85 at 3:37 p.m.

I Ask For This:

By: /s/

Karen P. Tandy

Assistant United States Attorney

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.	)	CRIMINAL NO.
)	
CHRISTOPHER FREDERICK RECKMEYER	)	Count 1: 21 USC 846
a/k/a "The Boss")	
a/k/a "The Rug Man"	)	Count 2: 21 USC 848
a/k/a "Big Brother")	
(Counts 1, 2, 7, 10, 12, 22, 24, 25, 26, 27, 28, 29, 30, 31)	)	Count 3: 21 USC 841(a)(1) 18 USC 2
)	
ROBERT BRUCE RECKMEYER	)	Count 4: 21 USC 841(a)(1) 18 USC 2
a/k/a "Little Brother")	
a/k/a "Robo")	
a/k/a "Blondie"	)	Count 5: 21 USC 841(a)(1) 18 USC 2
(Counts 1, 2, 3, 4, 5, 6, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 23, 39, 40, 41, 42, 43, 47, 48)	)	Count 6: 21 USC 841(a)(1) 18 USC 2
)	
GREGORY ALAN JARRETT	)	Count 7: 21 USC 841(a)(1) 18 USC 2
a/k/a "Scott")	
a/k/a "Wild Man")	
(Counts 1, 13, 14, 15, 16, 17)	)	Count 8: 21 USC 841(a)(1) 18 USC 2
)	
STEPHEN KING WORTH)	
a/k/a "Patrick Nelson Pine")	
a/k/a "Patrick Bartley"	)	Count 9: 21 USC 841(a)(1) 18 USC 2
a/k/a "Hippy Steve")	
(Counts 1, 32, 33)	)	Count 10: 21 USC 841(a)(1) 18 USC 2
)	
BRUCE WAYNE THOMASON)	
a/k/a "Loose Bruce")	
a/k/a "Troy Clayton"	)	Count 11: 21 USC 841(a)(1) 18 USC 2
(Counts 1, 2, 11, 12, 21, 44, 45, 46))	
	)	Count 12: 21 USC 841(a)(1) 18 USC 2
)	
THOMAS L. TUCKER)	
a/k/a "Thomas E. Hawkins"	)	Count 13: 18 USC 371
(Counts 1, 7))	
)	
PATRICK RYON HENDRY	)	Count 14: 26 USC 5861(d) & 5871
(Count 1))	
	)	Count 15: 26 USC 5861(d) & 5871
)	
LEON D. HARVEY)	
a/k/a "Smiles"	)	Count 16: 26 USC 5861(e) & 5871
(Counts 1, 8))	
	)	Count 17: 26 USC 5861(e) & 5871

PATRICIA L. RECKMEYER	)	Count 18: 18 USC 922(a)(5)
(Counts 1, 34, 35, 36, 37, 38))	
	)	Count 19: 18 USC 922(a)(5)
JAMES SAMUEL ADAMS)	
(Count 1)	)	Count 20: 31 USC 5316 31 CFR 103.23(a) 31 CFR 103.25(b) 31 CFR 103.49
DOUGLAS CRAIG COCHRAN)	
(Counts 1, 12))	
)	
DAVID WINDSOR COOK	)	Count 21: 18 USC 1014
(Count 1))	
	)	Count 22: 18 USC 1952(a)(3) 18 USC 2
CHARLES ARTHUR FRIEND, III)	
a/k/a "Carlos")	
(Counts 1, 16)	)	Count 23: 18 USC 1952(a)(3) 18 USC 2
)	
TIMOTHY PATRICK RUDDY)	
a/k/a "Douglas Paul Harrison"	)	Count 24: 26 USC 7206(1) 18 USC 2
a/k/a "Richard Dale Andrews")	
(Counts 1, 12))	
	)	Count 25: 26 USC 7206(1) 18 USC 2
ANDREW JAMES MEYERS)	
a/k/a "Carl")	
(Counts 1, 12, 13)	)	Count 26: 26 USC 7206(2) 18 USC 2
)	
JOHN CHRISTOPHER ROBINSON)	
a/k/a "Chris Robertson"	)	Count 27: 26 USC 7206(1) 18 USC 2
(Counts 1, 3))	
)	
WILLIAM HARRIS SHARPE	)	Count 28: 26 USC 7206(1) 18 USC 2
a/k/a "John Raymond Pavlovic")	
a/k/a "William Schaffer")	
a/k/a "William Stewart Sharpe"	)	Count 29: 26 USC 7206(2)
a/k/a "William Simpson")	
a/k/a "J.R. Shaffer"	)	Count 30: 26 USC 7206(1)
a/k/a "William Harris")	
(Counts 1, 10)	)	Count 31: 26 USC 7206(1)
)	
CHARLES ANTHONY SWEENEY	)	Count 32: 26 USC 7206(1) 18 USC 2
a/k/a "David Eugene Reich")	
a/k/a "Tony")	
(Count 1)	)	Count 33: 26 USC 7206(1) 18 USC 2
)	
THOMAS WALLACE ASHTON)	
(Counts 1, 3)	)	Count 34: 26 USC 7206(1) 18 USC 2
)	
SALVATORE F. VASTOLA)	
a/k/a "Sal"	)	Count 35: 26 USC 7206(1) 18 USC 2
(Count 1))	

CRAIG DOUGLAS SMITH)	
a/k/a "Donald Fisher"	)	Count 36: 26 USC 7206(1)
a/k/a "Smitty"	)	18 USC 2
(Count 1))	
	)	Count 37: 26 USC 7206(1)
	)	18 USC 2
STEPHEN SCOTT JOHNSON)	
a/k/a "Joseph Scott Henderson"	)	Count 38: 26 USC 7206(1)
a/k/a "Dan Bowen"	)	18 USC 2
(Counts 1, 13))	
	)	Count 39: 26 USC 7206(1)
RICHARD FRANCIS VAUGHN)	
(Count 1)	)	Count 40: 26 USC 7206(1)
)	
	)	Count 41: 26 USC 7206(1)
DONALD SHIRACK)	
a/k/a "Don Shipley"	)	Count 42: 26 USC 7206(2)
a/k/a "Danial Shipley")	
(Count 1)	)	Count 43: 26 USC 7206(1)
)	
FRANCOISE NASTA	)	Count 44: 26 USC 7206(1)
a/k/a "Frankie"	)	18 USC 2
(Count 1))	
	)	Count 45: 26 USC 7206(1)
JAN RICHARD GILLIE	)	18 USC 2
(Count 1))	
	)	Count 46: 26 USC 7206(1)
	)	18 USC 2
)	
	)	Count 47: 18 USC 1503
)	
	)	Count 48: 18 USC 1622

INTRODUCTION

At all times material to this Indictment:

1. CHRISTOPHER F. RECKMEYER (hereinafter referred to as "CHRIS RECKMEYER") was the owner of Crancy's, a sole proprietorship.

2. CHRIS RECKMEYER was the president of Crancy's, Inc., a corporation.

3. CHRIS RECKMEYER was the president of Organic Foods, Inc., a corporation.

4. CHRIS RECKMEYER was the only salesman of Unlimited Investments, Inc., a corporation.

5. CHRIS RECKMEYER was the co-owner of BCP, Inc., a corporation.

6. ROBERT BRUCE RECKMEYER (hereinafter referred to as "ROBERT RECKMEYER") was the president of United Trade, Inc., a corporation which also uses the name of "East West Design".

7. ROBERT RECKMEYER was the owner of Robert Bruce Products, a sole proprietorship.

8. ROBERT RECKMEYER was the president of Atlantis Stone Corporation, a corporation.

9. PATRICK RYON HENDRY (hereinafter referred to as "PAT HENDRY") was the President of Patrick R. Hendry, Inc., a corporation.

10. PAT HENDRY was the president of The Royal Stone Corporation, a corporation.

11. BRUCE WAYNE THOMASON (hereinafter referred to as "BRUCE THOMASON") was the owner of Mainland Carpets, a sole proprietorship.

12. BRUCE THOMASON was the president of Mainland Carpets, Inc., a corporation.

13. ROBERT GOVERN was the president of G & M Investment Enterprises, Inc., a corporation.

14. STEPHEN KING WORTH (hereinafter referred to as "STEVE WORTH") was the owner of S & M Products, a sole proprietorship.

15. JAMES SAMUEL ADAMS (hereinafter referred to as "JIM ADAMS") was the owner of Eastern Investments, a sole proprietorship.

16. JIM ADAMS was the owner of Everyday Man Products, a sole proprietorship.

17. THOMAS L. TUCKER (hereinafter referred to as "TOM TUCKER") was the owner of New China Rugs, a sole proprietorship.

COUNT 2

THE GRAND JURY FURTHER CHARGES THAT:

A. During a period from in or about 1974 and continuously thereafter up to and including the date of the bringing of this Indictment, in the Eastern District of Virginia and elsewhere, defendants CHRIS RECKMEYER, ROBERT RECKMEYER and BRUCE THOMASON, the defendants herein, unlawfully, willfully, intentionally and knowingly did engage in a continuing criminal enterprise, in that these three defendants did knowingly, willfully, intentionally and unlawfully violate Title 21, United States Code, Section 841(a)(1); such violations, including but not limited to those violations alleged in Counts 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 of this Indictment and which Counts are realleged and incorporated herein by reference as though fully set forth in this Count, were part of the continuing series of violations of Subchapters I and II of the Comprehensive Drug Abuse Control Act of 1970, Title 21, United States Code, Section 801 *et seq.*, undertaken by defendants CHRIS RECKMEYER, ROBERT RECK-

MEYER, and BRUCE THOMASON, in concert with at least five other persons with respect to whom defendants CHRIS RECKMEYER, ROBERT RECKMEYER, and BRUCE THOMASON each occupied a position of organizer, supervisor and manager, and from which such continuing series of violations the said defendants obtained substantial income and resources.

B. Forfeiture

From their engagement in the aforesaid continuing criminal enterprise, the defendants CHRIS RECKMEYER, ROBERT RECKMEYER, and BRUCE THOMASON shall forfeit to the United States any profits they obtained arising from their participation in the said enterprise and any of their interests in, claims against, and property and contractual rights of any kind which afforded a source of influence over said enterprise, including but not limited to the following:

1. Condominium Unit Number M-48 in Estate Questa Verde, lying and being in Estate Hermon Hill, Company Quarter, Christianstead, St. Croix, U.S. Virgin Islands, together with 1.22366 percent individual interest in the common areas and facilities so declared in the Declaration of Condominium to be appurtenant to the above-described condominium unit; and all rental and lease income from condominium Unit Number M-48.

2. A parcel of land containing 675.49 acres, more or less, with all improvements, structures, livestock, machinery and appurtenances thereto, known as the "Shelburne Glebe" located on the southeast side of Road No. 729 approximately 4.5 miles southwest of Leesburg, in Mercer Magisterial District, Loudoun County, Virginia, and more particularly described in the deed recorded in Deed Book 769 beginning at page 03 in the land records of Loudoun County, Virginia.

3. A parcel of land containing 50.19 acres with all improvements, structures, machinery, livestock and appurte-

nances thereto, located on the northwest side of Road No. 797 approximately 4.5 miles southwest of Leesburg, Mercer Magisterial District, Loudoun County, Virginia, and more particularly described in the deed recorded in Deed Book 788 beginning at page 759 in the land records of Loudoun County, Virginia.

4. A parcel of land containing 10.0 acres, with all improvements, structures, machinery, livestock and appurtenances thereto, located on the northwest side of Road No. 797, Mercer Magisterial District, Loudoun County, Virginia, and more particularly described in Schedule A of the deed recorded in Deed Book 795 beginning at page 45 in the land records of Loudoun County, Virginia.

5. A parcel of land containing 146.2785 acres, with all improvements, structures, machinery, livestock and appurtenances thereto, located approximately three miles south of Hamilton, Blue Ridge Magisterial District, Loudoun County, Virginia, and more particularly described in the deed recorded in Deed Book 805 beginning at page 336 in the land records of Loudoun County, Virginia and in a subsequent recording, as evidenced by the transfer of title to William J. Reckmeyer, Sr., father of Chris Reckmeyer, as recorded by deed in Deed Book 836 beginning at page 184 in the land records of Loudoun County, Virginia.

6. A parcel of land containing 38.961 acres, with all improvements, structures, machinery, livestock and appurtenances thereto, located near Mt. Gilead in Mercer Magisterial District, Loudoun County, Virginia, and more particularly described by a plat and survey of J. Horace Jarrett, C.L.S., dated August 17, 1982, a copy of which is attached to the deed recorded in Deed Book 819 beginning at page 860 in the land records of Loudoun County, Virginia.

7. A parcel of land containing 32.632 acres, with all improvements, structures, machinery, livestock and ap-

purtenances thereto, located near the northwest side of Franklin Gibson Road in the Eighth Election District of Anne Arundel County, Maryland and more particularly described in a legal description attached to the deed recorded in Deed Book 3466 beginning at page 253 among the land records of Anne Arundel County, Maryland and in a subsequent recording, as evidenced by the transfer of title to Jim Adams, brother-in-law of Robert Reckmeyer, as recorded in Deed Book 3466 beginning at page 253 in the land records of Anne Arundel County, Maryland.

8. Any and all precious metals owned by or held on behalf of CHRIS RECKMEYER, ROBERT RECKMEYER and/or BRUCE THOMASON and the business entities which they each control and/or in which they hold any interest, including but not limited to: gold and silver bullion and coins, Baht gold jewelry, gold Canadian maple leaf coins, gold Krugerrand coins, gold and silver chains, and gold and silver bracelets.

9. Any and all precious gemstones owned by or held on behalf of CHRIS RECKMEYER, ROBERT RECKMEYER and/or BRUCE THOMASON and the business entities which they each control and/or in which they hold any interest, including but not limited to: golden sapphires, Burma rubies, Thailand rubies, emeralds, tanzanites, pink sapphires, diamonds and pearls.

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16. Any and all of the shareholder and ownership interest of CHRIS RECKMEYER and Nancy L. Reckmeyer in B.C.P., Inc., a corporation in the State of California.

17. Any and all stock, financial, or other ownership interest of Chris Reckmeyer in American Deli, Inc., a corporation in the State of Florida.

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21. Any and all stock, assets and inventory of Manpower Management, Inc., a corporation in the State of Virginia.

22. Any and all stock, assets and inventory of United Trade, Inc., a corporation in the State of Maryland, also

doing business as "East West Design" in the State of Virginia.

23. Any and all stock, assets and inventory of Robert Bruce Products.

24. Any and all stock, assets and inventory of Atlantis Stone Corporation, a corporation in the State of Delaware.

25. Any and all stock, assets and inventory of Mainland Carpets, Inc., a corporation in the State of Virginia.

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- d. Bank of New York account number S 063795054246 as agent for Merrill Lynch account number 795-05424 in the name of Unlimited Investments, Inc., Money Purchase Plan;

e. Bank of New York account number S 063795054253 as agent for Merrill Lynch account number 795-05425 in the name of Unlimited Investments, Inc., Profit Sharing Plan;

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- c. First Virginia Bank account number 0530-6728 in the name of Mainland Carpets, Inc.;
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- e. First American Bank of Virginia account number 0624-4912 in the name of Unlimited Investments, Inc.;

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 - g. Dominion National Bank of Virginia account number 4-250-280-1 in the name of Organic Foods, Inc.;
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41. Approximately \$195,180.16, derived from the 1983 sale by ROBERT RECKMEYER and Patricia Reckmeyer of a parcel of real property and all appurtenances thereto, said property being known as "Gibraltar Farm" and containing approximately 176 acres located in Fauquier County, Virginia; all proceeds from the 1983 sale of said property and all accrued interest on the aforesaid \$195,180.16 since its November 15, 1983 seizure by the United States of America.

(All in violation of Title 21, United States Code, Section 848.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

Cr. No. 85-00010A

UNITED STATES OF AMERICA

v.

CHRISTOPHER F. RECKMEYER, *Et al.*

**NOTICE OF RECEIPT OF FUNDS FROM
THE DEFENDANT**

Bernard S. Bailor, attorney for Christopher F. Reckmeyer, respectfully files this notice regarding the receipt of funds from the defendant Christopher F. Reckmeyer:

1. On January 25, 1985, I received approximately \$25,000 from Christopher F. Reckmeyer for the payment of attorney fees and other expenses for the defense of the above styled cause.

2. As attorneys for Christopher F. Reckmeyer, we have been enjoined by an Order of this Court dated January 14, 1985, from transferring any possessions of Christopher F. Reckmeyer, including currency having a retail value of in excess of \$1,000.

3. In compliance with this Court's Order dated January 14, 1985, we are holding the funds received from Christopher F. Reckmeyer in escrow and not transferring the same pending further Order of the Court.

Respectfully submitted,

/s/

BERNARD S. BAILOR
CAPLIN & DRYSDALE, CHARTERED
One Thomas Circle, N.W.
Washington, D.C. 20005
(202) 862-5049

Dated: January 25, 1985

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

Cr. No. 85-00010A

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER F. RECKMEYER, II, *et al.*,

Defendants.

MOTION OF CHRISTOPHER F. RECKMEYER
FOR AN ORDER MODIFYING RESTRAINING ORDER OF
JANUARY 14, 1985 AND EXCLUDING
ATTORNEY FEES AND COSTS FROM FORFEITURE

COMES NOW, Christopher F. Reckmeyer II, through undersigned counsel, and respectfully moves this Court for an Order modifying its restraining Order of January 14, 1985 so that monies paid and owed to his attorneys for legitimate fees and costs are excluded therefrom and from forfeiture.

The grounds for this Motion are set forth in the accompanying Memorandum.

Respectfully submitted,
CAPLIN & DRYSDALE, CHARTERED

/s/

Ralph A. Muoio
One Thomas Circle
Washington, D.C. 20005
(202) 862-5000

LERCH, EARLY, ROSEMAN &
FRANKEL, CHARTERED

/s/

Stanley J. Reed
7101 Wisconsin Avenue
Suite 1300
Bethesda, Md. 20814-4892
(301) 986-1300

/s/

Geoffrey J. Vitt
221 South Alfred Street
Alexandria, Va. 22313
(202) 862-5000

*Attorneys for
Christopher F. Reckmeyer, II*

Dated: March 7, 1985

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DIVISION OF VIRGINIA
Alexandria Division

CRIMINAL NO. 85-00010A

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER F. RECKMEYER, II, *et al.*,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
CHRISTOPHER F. RECKMEYER'S MOTION
FOR AN ORDER MODIFYING RESTRAINING
ORDER OF JANUARY 14, 1985 AND EXCLUDING
ATTORNEY FEES AND COSTS FROM FORFEITURE

This Memorandum is submitted in support of Christopher F. Reckmeyer's Motion to exclude from forfeiture and from the Court's January 14, 1985 restraining Order funds sufficient to pay legitimate attorney's fees and costs in order to secure effective assistance of counsel.

BACKGROUND

1. The law firm of Caplin & Drysdale, Chartered, ("C&D") has represented Christopher F. Reckmeyer (Reckmeyer) since the summer of 1983 in connection with the grand jury investigation that culminated in the indictment of Reckmeyer and others on January 15, 1985. During that period of time, bills were periodically rendered to Reckmeyer, or to corporations owned by him, for services rendered by C&D at the standard hourly rates for the attorneys involved, plus out-of-pocket disbursements.

2. As of December 31, 1984, Reckmeyer had been billed for, and owed C&D, \$26,444.97 for services rendered and costs incurred through that date.

3. On or about January 14, 1985, C&D received by mail two checks, each in the amount of \$5,000, drawn on bank accounts in the name of two of Reckmeyer's corporations, Organic Foods, Inc. and Crancy's, Inc. Copies of these checks are attached as Exhibit A. The checks were deposited by C&D on January 14, 1985. See Exhibit B.

4. On January 14, 1985, this Court issued an Order restraining the transfer of assets by Reckmeyer and others. A copy of the restraining order is attached as Exhibit C. Specifically included in the Order were the two bank accounts upon which the checks described in paragraph 3 were drawn. (See Order ¶ 40 b. and g.)¹ On January 22, 1985, the two checks were returned unpaid to C&D. See Exhibit D.

5. On January 25, 1985, the day he surrendered, Reckmeyer paid C&D \$25,480. Notice of the receipt of these funds was filed with the Court that same day (Exhibit E) and the funds were deposited by C&D in a separate escrow account at the National Bank of Commerce in Washington, D.C. pending further order of the Court. See Exhibit F. As of January 24, 1985, Reckmeyer owed C&D \$36,599.40.

6. At Reckmeyer's request, C&D has continued to represent him in connection with the pending indictment and the trial scheduled to begin March 18, 1985. Stanley J. Reed, of the law firm of Lerch, Early, Roseman & Frankel, has also been retained to assist in Reckmeyer's defense. Because of the scope of the indictment and the seriousness of the offenses charged, a very substantial amount of time and expense has been and will continue to be incurred on Reckmeyer's behalf.

¹ Commonwealth Bank and Trust Company of Virginia is now known as Dominion National Bank of Virginia.

7. Except for the funds described above in paragraphs 3 and 5, neither C&D nor Lerch, Early, Roseman & Frankel has received any monies from or on behalf of Reckmeyer in satisfaction of amounts owed by him for legal fees and related expenses.

8. The Government has seized and has possession of a substantial amount of money belonging to Reckmeyer.

DISCUSSION

The issue raised by the present motion was decided on February 22, 1985 by the United States District Court for the District of Colorado. *United States v. Rogers* 84-CR-337. A copy of the Court's Memorandum Opinion and Order is attached as Exhibit G. The Court in *Rogers* held that the forfeiture provisions of the Comprehensive Crime Control Act of 1984 do not authorize the forfeiture of assets legitimately transferred to attorneys for services rendered. Although the Court was interpreting the forfeiture provision applicable to a RICO indictment, it recognized that the RICO and drug enforcement forfeiture provisions are virtually identical and relied on the legislative history of the drug provisions in interpreting the RICO provisions.

The *Rogers* opinion is thorough, well reasoned and correct. For the reasons discussed therein and in order to insure that Reckmeyer is not deprived of his rights to due process and to the effective assistance of counsel of his choice, an Order is requested which, among other things, does the following:

(a) Authorizes Caplin & Drysdale, Chartered to receive the \$25,480 now in escrow at the National Bank of Commerce in partial payment of amounts owed to it by Reckmeyer;

(b) Authorizes Caplin & Drysdale, Chartered to redeposit the two checks described in paragraphs 3 and 4 above and

directs the two banks upon whom those checks are drawn to process them for payment;

(c) Authorizes a procedure under which Caplin & Drysdale, Chartered and Lerch, Early, Roseman & Frankel will be paid for ongoing services rendered and costs incurred in Reckmeyer's defense out of Reckmeyer's funds presently in the possession of the government or in the possession of third parties but frozen pursuant to the Court's restraining order of January 14, 1985.

Respectfully submitted,

CAPLIN & DRYSDALE, CHARTERED

/s/

Ralph A. Muoio
One Thomas Circle
Washington, D.C. 20005
(202) 862-5000

LERCH, EARLY, ROSEMAN &
FRANKEL, CHARTERED

/s/

Stanley J. Reed
7101 Wisconsin Avenue
Suite 1300
Bethesda, Md. 20814-4892
(301) 986-1300

CAPLIN & DRYSDALE, CHARTERED

/s/

Geoffrey J. Vitt
221 South Alfred Street
Alexandria, Va. 22313
(202) 862-5000

*Attorneys for
Christopher F. Reckmeyer, II*

Dated: March 7, 1985

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CRIMINAL NO. 85-10-A

UNITED STATES OF AMERICA

v.

CHRISTOPHER RECKMEYER,

Defendant.

Friday, March 15, 1985
Alexandria, Virginia

Transcript of Defendant's Motion Modifying Restraining Order of January 14, 1985, in the above-captioned matter.

BEFORE:

The Honorable ALBERT V. BRYAN, JR., Judge
United States District Court

APPEARANCES:

FOR THE UNITED STATES:

KENT ROBINSON, ESQUIRE
KAREN P. TANDY, ESQUIRE
JUNE SERAYDAR, ESQUIRE
Assistant United States Attorneys
701 Prince Street
Alexandria, Virginia 22314

FOR THE DEFENDANT:

GEOFFREY VITT, ESQUIRE
BERNARD S. BAILOR, ESQUIRE
RALPH A. MUOIO, ESQUIRE
OF: CAPLIN & DRYSDALE
1101 17th Street, N.W.
Washington, D.C. 20036

PROCEEDINGS

THE CLERK: Criminal Action No. 85-10-A, United States versus Christopher Reckmeyer.

MR. ROBINSON: Kent Robinson, Karen Tandy, and June Seraydar for the United States.

MR. VITT: Geoffrey Vitt, Bernard Bailor and Ralph Muoio appearing for the defendant.

THE COURT: Comes on on the defendant's motion for modification of the preliminary relief of the restraint.

MR. MUOIO: Good morning, Your Honor. My name is Ralph Muoio. I am with the firm of Caplin & Drysdale, which has been representing Christopher Reckmeyer since the Summer of '83. We will file a motion seeking to modify—

THE COURT: You have violated one of the cardinal rules in representing a defendant, and that's to get your fee up front.

MR. MUOIO: Well, under the Government's interpretation of the new rule, Your Honor, I'm not sure getting the fees up front would, under their view—

THE COURT: Well, at least they would have to come after you to get it instead of you having to come after forfeited property to get it.

MR. MUOIO: I have got \$25,000, which is one of the issues, and then we have a large bill, of course, which has run up since then.

THE COURT: I understand that's what prompted the motion.

MR. MUOIO: I think the decision in Rogers is correct, for the following reasons—

THE COURT: Rogers was a pretrial adjudication, though, wasn't it?

MR. MUOIO: It was a pretrial, yes.

THE COURT: There has been a plea of guilty here. Doesn't that alter the posture of the property that you seek to have released from restraining order?

MR. MUOIO: Well, Mr. Reckmeyer pled guilty yesterday. As I read the law, the forfeiture order which issues, will issue eventually, will issue at sentencing. At that point the Court will order the forfeiture of the assets.

THE COURT: Was the plea at all conditioned on Count 2? I mean, did it reserve any forfeitable or forfeiture allegations in Count 2?

MR. MUOIO: Not to my knowledge.

THE COURT: There has been an unconditional plea to Count 2.

MR. MUOIO: Unconditional plea to Count 2.

THE COURT: And Count 2 seeks forfeiture of all of these assets, doesn't it?

MR. MUOIO: Yes, Your Honor.

THE COURT: So they have been forfeited subject only to entry of the order of forfeiture?

MR. MUOIO: Correct, Your Honor.

THE COURT: Isn't then your appropriate remedy to apply—to assert an interest in that forfeitable property superior to the Government's interest?

MR. MUOIO: Yes.

THE COURT: I don't think you can do that in this proceeding, can you?

MR. MUOIO: Well, I think with respect to amounts we would attempt to recover for services rendered post in-

dictment which have not even been billed yet, I think we are probably relegated almost certainly to a post conviction or post forfeiture proceeding, which is subsection N proceeding; we could make our—take our position there. I'm not at all clear that we are in an appropriate forum now with respect to the \$25,000 which was paid to us in January post indictment, which we have, and which we have in an escrow bank account, as trustees. One of my requests in the motion was for permission to take that money—

THE COURT: Has the Government asserted an interest in that through the forfeiture under Count 2?

MR. MUOIO: Not directly, Your Honor. It's not listed, specifically listed in the indictment so we now have it in an escrow account or trust account in \$25,000 and some odd hundred, which was transferred to us for services that had been rendered. There was one other—

THE COURT: Before the return of the indictment or after the return of the indictment?

MR. MUOIO: The \$25,000 was after the return of the indictment. There was \$10,000 that was before the return of the indictment, which we received in the form of two checks before the indictment was published on the 15th. Those were deposited by a bookkeeper in the normal course on the 14th. They came in I think on a weekend, on the morning of the 14th which was a Monday; and on the 14th, your order was issued, your restraining order which was served also on the banks so the money, the checks went into our deposit. By the time they got to the bank upon which they were drawn, the restraining order had been served on the bank so the checks bounced. So we got three kinds of categories of money—the 10 pre-indictment, received but not cleared; the \$25,000 plus which was received post indictment for services that had been rendered; and fees and time charges and disbursements that have gone out since. I think the appropriate forum

for the amounts that have been run up since may very well be post indictment petition or post forfeiture petition.

THE COURT: I'm not sure that modification of the temporary restraining order at this stage would change anything as a practical matter. If these funds had been forfeited as a result of the plea to Count 2, then they are forfeited without regard to any temporary restraining order but I don't know that. I hadn't thought that through until right now. The question whether they are forfeited or not I don't know is governed by the temporary restraining order.

MR. MUOIO: That's correct, Your Honor. In order to release those funds, Your Honor will have to agree with the Court in the Rogers case and find that those have been transferred to us for legitimate services rendered and are not within the scope of the forfeiture provisions.

THE COURT: Well, the theory of the forfeiture is that it didn't belong to the defendant to begin with, because it was the result of criminal activity. So I'm not sure that I agree completely with the Rogers case in its analysis. Let me hear from the Government.

MR. ROBINSON: Your Honor, first of all with respect to the plea that was entered yesterday, it did specifically call for forfeiture immediately of all assets listed in Count 2 of the indictment. That included aside from specific assets, it included all currency in the possession or ownership of the defendant. So clearly it would cover the \$25,000 that is part of the subject of this morning's proceeding. It also calls for forfeiture of the bank accounts of the defendant's businesses which are the accounts on which he wrote the checks to which defense counsel has referred this morning. In addition I would note that the \$10,000 written on those business bank accounts were in fact after the return of the indictment. The indictment was returned on January 9th, and I believe Mr. Muoio has just said that they were received some time after that point, approxi-

mately on the 14th. Once that plea of guilty is entered, particularly where it calls for immediate forfeiture as this one did, forfeiture is automatic. It has in effect taken place but for the entry of the formal order. So the Government would take the position that in effect all of the assets are now certainly in the possession of the Government. I don't think this is the appropriate proceeding for the resolution of third-party claims against the forfeited assets. I think the statute clearly sets forth how that is to take place and doesn't distinguish lawyers from any other creditors. That's all, Your Honor.

THE COURT: Yes?

MR. MUOIO: I would just like to point out one fact, if you will, Your Honor, because it was alluded to by Government counsel. It's the word currency in defendant's possession. The forfeiture count in the indictment lists a lot of assets but doesn't list currency in the possession of the defendant, strangely enough, at least as far as I can tell. The closest it comes is on page 45 of the indictment, paragraph 26. If you compare that paragraph with the way it was drafted in the Court's restraining order, one notes that in the restraining order the word currency is inserted in that paragraph in brackets, whereas, the word currency is not in the indictment. I see no catchall description in the count in the indictment that would reach currency in the possession of the defendant, although the restraining order would appear to cover currency in the possession—I'm not sure whether it does or not—the word currency is inserted in the verbatim paragraph 26 in brackets. Arguably the count does not cover on its face currency in the possession of the defendant.

THE COURT: Well, you can argue that. I just don't think this is the proper place to do it. The temporary restraining order was a penderite lite type of relief to freeze things until there could be some adjudication under Count 2. There has now been that adjudication. I don't

think modification of the temporary restraining order, assuming it is still extant, affects whether those sums are forfeitable or not. I think you may argue that under Count 2 that what you have is not forfeitable but I don't think this is the appropriate place to do it. The Government takes the position that all of it is forfeitable or forfeited; and I think there is a statutory remedy for a third-party claim against what the Government undertakes to forfeit or forfeits; and I think that's the remedy you will have to pursue.

MR. MUOIO: We will pursue that, Your Honor.

THE COURT: I'm sure you will.

MR. MUOIO: Without waiving any rights that we have.

THE COURT: The motion for modification of the preliminary restraining order will be denied. (Thereupon, the proceedings in the above-captioned matter were concluded.)

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CRIMINAL NO. 85-10-A

UNITED STATES OF AMERICA

v.

CHRISTOPHER RECKMEYER,

Defendant.

ORDER

For the reasons stated from the bench, it is hereby ORDERED that the motion of the defendant Christopher Reckmeyer for a modification of the court's temporary restraining order of January 14, 1985 is denied.

United States District Judge

Alexandria, Virginia
March 15th, 1985

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CRIMINAL NO. 85-00010-A

UNITED STATES OF AMERICA

v.

CHRISTOPHER F. RECKMEYER, II

CONSENT DECREE FOR FORFEITURE

COMES NOW the United States of America, by and through its undersigned counsel, and CHRISTOPHER F. RECKMEYER (hereinafter referred to as CHRIS RECKMEYER), individually and by and through this counsel, to hereby agree and stipulate that the following property is knowingly and voluntarily forfeited to the United States of America:

1. A parcel of land containing 675.49 acres, more or less, with all improvements, structures, livestock, machinery and appurtenances thereto, known as the "Shelburne Glebe" located on the southeast side of Road No. 729 approximately 4.5 miles southwest of Leesburg, in Mercer Magisterial District, Loudoun County, Virginia, and more particularly described in the deed recorded in Deed Book 769 beginning at page 03 in the land records of Loudoun County, Virginia.

2. A parcel of land containing 50.19 acres with all improvements, structures, machinery, livestock and appurtenances thereto, located on the northwest side of Road No. 797 approximately

4.5 miles southwest of Leesburg, Mercer Magisterial District, Loudoun County, Virginia, and more particularly described in the deed recorded in Deed Book 788 beginning at page 759 in the land records of Loudoun County, Virginia.

3. A parcel of land containing 10.0 acres, with all improvements, structures, machinery, livestock and appurtenances thereto, located on the northwest side of Road No. 797, Mercer Magisterial District, Loudoun County, Virginia, and more particularly described in Schedule A of the deed recorded in Deed Book 795 beginning at page 45 in the land records of Loudoun County, Virginia.

4. A parcel of land containing 146.2785 acres, with all improvements, structures, machinery, livestock and appurtenances thereto, located approximately three miles south of Hamilton, Blue Ridge Magisterial District, Loudoun County, Virginia, and more particularly described in the deed recorded in Deed Book 805 beginning at page 336 in the land records of Loudoun County, Virginia and in a subsequent recording, as evidenced by the transfer of title to William J. Reckmeyer, Sr., father of Chris Reckmeyer, as recorded by deed in Deed Book 836 beginning at page 184 in the land records of Loudoun County, Virginia.

5. A parcel of land containing 38.961 acres, with all improvements, structures, machinery, livestock and appurtenances thereto, located near Mt. Gilead in Mercer Magisterial District, Loudoun County, Virginia, and more particularly described by a plat and survey of J. Horace Jarrett, C.L.S., dated August 17, 1982, a copy of which is attached to the deed recorded in Deed Book

819 beginning at page 860 in the land records of Loudoun County, Virginia.

6. Any and all precious metals owned by or held on behalf of CHRIS RECKMEYER and/or the business entities which he controls and/or holds any interest, including but not limited to: gold and silver bullion and coins, Baht gold jewelry, gold Canadian maple leaf coins, gold Krugerrand coins, gold and silver chains, and gold and silver bracelets.

7. Any and all precious gemstones owned by or held on behalf of CHRIS RECKMEYER and/or _____, emeralds, tanzanites, pink sapphires, diamonds and pearls.

8. Any and all oriental carpets and/or rugs, silk tapestries and/or rugs, furniture, chests, antiques, and lamps owned by or held on behalf of CHRIS RECKMEYER and/or the business entities which he controls and/or holds any interest.

9. A deposit of \$2,500 held in escrow by Wellborn County Properties, Inc. for the purchase of 44.62 acres of land, including all improvements, located in Loudoun County, Virginia.

10. A January 6, 1984 promissory note payable to CHRIS RECKMEYER and Nancy Reckmeyer by William John Reckmeyer, Sr. in the amount of \$112,500 plus accrued interest.

11. All accounts receivable of CHRIS RECKMEYER and/or the business entities which he controls and/or holds any interest including, but not limited to, all accounts payable by Michael J. Kapper and Robert B. Reckmeyer.

12. Eight oriental carpets totalling 162 square feet belonging to CHRIS RECKMEYER and held

on consignment by Brett C. Leavenworth in Tucson, Arizona.

13. Any and all stock, assets and inventory of Unlimited Investments, Inc., a corporation in the State of Virginia, including but not limited to, all accounts at any financial institutions, typewriters, scales, file cabinets, safes and oval carpet.

14. Any and all of the shareholder and ownership interest of CHRIS RECKMEYER and Nancy L. Reckmeyer in B.C.P., Inc., a corporation in the State of California.

15. Any and all stock, financial, or other ownership interest of CHRIS RECKMEYER in American Deli, Inc., a corporation in the State of Florida.

16. A November 1983 promissory note in the amount of \$5,000 plus accrued interest payable to CHRIS RECKMEYER by Mark B. Newman, President of the American Deli, Inc.

17. Any and all stock, assets and inventory of Crancy's Inc., a corporation in the State of Virginia.

18. Any and all stock, assets and inventory of Organic Foods, Inc., a corporation in the State of Virginia.

19. Any and all stock, assets and inventory of Manpower Management, Inc., a corporation in the State of Virginia.

20. Any and all possessions of CHRIS RECKMEYER with a retail value of \$1,000 or more, including but not limited to, furniture, musical instruments, appliances, carpets, electronic devices, art objects, antiques and currency; including but not limited to such possessions located

at the "Shelburne Glebe" in Loudoun County, Virginia.

21. A 1978 Chevrolet four door station wagon, vehicle identification number CCL168F203822.

22. A 1974 Cadillac four door sedan, vehicle identification number 6B69R4Q172668.

23. A 1979 Chevrolet station wagon, vehicle identification number CCS269F109212.

24. A 1984 Chevrolet station wagon, vehicle identification number 1G8GC26M5EF107085.

25. A 1976 Cadillac four door sedan, vehicle identification number 6B69S6Q215574.

26. A 1984 Chevrolet station wagon, vehicle identification number 1G8GK26M4EF107548.

27. Any and all personal and/or corporate ownership interest of CHRIS RECKMEYER in monies deposited by or on behalf of CHRIS RECKMEYER and/or his business entities, to any and all personal and corporate pension plans, money purchase plans, keogh plans, individual retirement accounts, annuity contracts or any other retirement or profit sharing funds including, but not limited to, the following:

a. Keogh Annuity Contracts numbers 4278206 and 4278207, each in the amount of \$7,500, and any accrued interest, in the names of CHRIS RECKMEYER and Nancy Reckmeyer issued by the Franklin Life Insurance Company of Springfield, Illinois;

b. Sovran Bank account number 9381-2959 in the name of Crancy's, Inc. Money Purchase and Retirement Trust;

- c. Sovran Bank account number 9381-2946 in the name of Crancy's, Inc., Profit Sharing and Retirement Trust;
- d. Bank of New York account number S 063795054246 as agent for Merrill Lynch account number 795-05424 in the name of Unlimited Investments, Inc., Money Purchase Plan;
- e. Bank of New York account number S 063795054253 as agent for Merrill Lynch account number 795-05425 in the name of Unlimited Investments, Inc., Profit Sharing Plan;
- f. First American Bank of Virginia, Individual Retirement Account Numbers 240102282 and 24-0102231, Certificates of Deposit Numbers 721509 and 721504 in the names of CHRIS RECKMEYER and Nancy Reckmeyer.

28. Any and all personal and/or corporate ownership interest of CHRIS RECKMEYER in any monies deposited by or on behalf of CHRIS RECKMEYER and/or his business entities, in any safe deposit boxes and in any and all personal checking accounts, corporate checking accounts, savings accounts and any other accounts including, but not limited to, the following:

- a. First Virginia Bank account number 85134120 in the name of CHRIS RECKMEYER and Nancy Reckmeyer;
- b. First Virginia Bank account number 07161433 in the name of Crancy's, Inc.;
- c. First American Bank of Virginia account number 0624-4912 in the name of Unlimited Investments, Inc.;

- d. First American Bank of Virginia account number 0649-9198 in the name of Manpower Management, Inc.;
- e. Dominion National Bank of Virginia account number 4-250-280-1 in the name of Organic Foods, Inc.;

29. All assets listed on Attachments 1 through 37, incorporated herein by reference;

30. All monies and funds restrained by the January 14, 1985 restraining order entered in the above-styled case, including but not limited to the approximately \$25,000 held in escrow by Bernard S. Bailor and/or his agents;

31. All assets and items seized by law enforcement agents during the period January 15-18, 1985 from the "Shelburne Glebe" located in Loudoun County, Virginia; the Organic Foods warehouse located at 118 Underwood Lane, Unit D, Sterling, Virginia; and the Crancy's warehouse located at 118 Underwood Lane, Unit F, Sterling, Virginia; including but not limited to oriental carpets, chinese vases and lamps with shades, carved wooden chests, silver, tiffany lamp shades and furniture;

32. A September 10, 1984 promissory note in the amount of \$39,000.00 plus accrued interest payable to Crancy's Inc. Money Purchase Plan Trust and/or its agents by Dr. William John Reckmeyer and/or Wearever, Inc. or their assigns;

33. A September 10, 1984 promissory note in the amount of \$31,000.00 plus accrued interest payable to Crancy's Inc. Profit Sharing Plan Trust and/or its agents by Dr. William John

Reckmeyer and/or Wearever, Inc. or their assigns.

Said forfeited property being the proceeds and profits which CHRISTOPHER F. RECKMEYER, II obtained arising from his participation in a continuing criminal enterprise and his interests in, claims against, and property and contractual rights which afforded a source of influence over the continuing criminal enterprise, and as such, the above listed properties are thereby subject to forfeiture pursuant to the March 14, 1985 plea agreement entered into in the Eastern District of Virginia between the United States of America and CHRISTOPHER F. RECKMEYER.

SEEN AND AGREED:

ELSIE L. MUNSELL
UNITED STATES ATTORNEY

By: /s/
KAREN P. TANDY
Assistant United States Attorney

Date _____
Christopher F. Reckmeyer
Defendant

Date _____
Stanley J. Reed
Counsel for Defendant

ORDER

Based upon the foregoing stipulation and agreement and for the reasons stated at bar, it is hereby

ORDERED, ADJUDGED and DECREED that each of the properties listed in the foregoing Consent Decree for Forfeiture is hereby condemned and forfeited to the United

States of America, the said properties to be seized forthwith by the United States Marshal for the Eastern District of Virginia or his authorized representative, and disposed of in accordance with the law; it being further

ORDERED, ADJUDGED and DECREED that the defendant CHRIS RECKMEYER shall immediately notify the United States of America if the whereabouts of any of the above forfeited assets become known to him following the entry of this Order and shall immediately deliver said forfeited properties to the United States Marshal of the Eastern District of Virginia.

This 17th day of May, 1985.

UNITED STATES DISTRICT JUDGE

Alexandria, Virginia

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CRIMINAL NO. 85-00010A

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER F. RECKMEYER, II,

Defendant.

CLAIM OF CAPLIN & DRYSDALE, CHARTERED, OF
INTEREST IN FORFEITED PROPERTY AND PETITION
FOR HEARING TO ADJUDICATE VALIDITY OF
CLAIMED INTEREST

Pursuant to 21 U.S.C. § 853(n), Caplin & Drysdale, Chartered, hereby claims an interest in the property of Christopher F. Reckmeyer subject to the Forfeiture Order entered by this Court on May 17, 1985 and petitions this Court for a hearing to adjudicate the validity of its claim and interest in property. This Court has jurisdiction over this action under Title 21, U.S.C. § 853. In support of this claim and petition, Caplin & Drysdale, Chartered asserts the following:

1. Petitioner, Caplin & Drysdale, Chartered, is a law firm incorporated in the District of Columbia with offices at One Thomas Circle, Washington, D.C. 20005.

2. Caplin & Drysdale, Chartered, has rendered legal services and represented Christopher F. Reckmeyer (Reckmeyer) and corporations owned by him since the summer of 1983.

3. Prior to December 31, 1984 bills were periodically rendered to Reckmeyer, or to corporations owned by him, for services rendered by Caplin & Drysdale, Chartered at the standard hourly rates for the attorneys involved, plus out-of-pocket disbursements.

4. As of December 31, 1984, Reckmeyer had been billed for, and owed Caplin & Drysdale, Chartered, \$26,444.97 for services rendered and costs incurred in the representation through that date.

5. On or about January 14, 1985, Caplin & Drysdale, Chartered received two checks, each in the amount of \$5,000.00, drawn on the bank accounts of two of Reckmeyer's corporations, Organic Foods, Inc. and Crancy's Inc. Copies of these checks are attached as Exhibit A. The checks were deposited on January 14, 1985. See Exhibit B.

6. On January 14, 1985, this Court issued an Order restraining the transfer of assets by Reckmeyer and others. A copy of the restraining order is attached as Exhibit C. As a result of this restraining order the two checks discussed in paragraph 5, above, were returned unpaid to Caplin & Drysdale, Chartered. See Exhibit D.

7. Prior to January 25, 1985, Reckmeyer continuously represented to Caplin & Drysdale, Chartered, that he was not involved in the distribution of marijuana or other controlled dangerous substances. Caplin & Drysdale, Chartered, provided legal services to Reckmeyer prior to January 25, 1985 in a good faith belief that Reckmeyer was not involved in trafficking in marijuana or other dangerous substances.

8. On January 25, 1985, the day he surrendered, Reckmeyer paid Caplin & Drysdale, Chartered \$25,480.00. Notice of the receipt of these funds was filed with the Court (Exhibit E) and the funds were deposited by Caplin & Drysdale, Chartered in a separate escrow account at the

National Bank of Commerce in Washington, D.C. pending further order of the Court. See Exhibit F.

9. As of January 24, 1985, Reckmeyer owed Caplin & Drysdale, Chartered \$36,599.40.

10. At Reckmeyer's request, Caplin & Drysdale, Chartered continued to represent him in his defense of the indictment returned in the Eastern District of Virginia.

11. In defending the charges against Reckmeyer, Caplin & Drysdale, Chartered incurred the following expenses and time charges:

- a. Disbursements for the retention of Stanley J. Reed of Lerch, Early, Roseman & Frankel to assist in Mr. Reckmeyer's defense. Mr. Reed was retained in order to comply with the requirements of Canon 6, ABA Code of Professional Responsibility because Caplin & Drysdale, Chartered was not experienced in defense of drug cases. (Exhibit G). \$46,975.54
- b. Other disbursements in connection with the defense (xerox, telephone, investigators, etc.) See Exhibit H. \$14,313.95
- c. Caplin & Drysdale, Chartered attorney time charges. \$109,223.50

12. None of the amounts set forth in paragraph 12 have been paid to Caplin & Drysdale, Chartered.

13. In rendering the services to Mr. Reckmeyer, Caplin & Drysdale, Chartered was a good faith provider of services for value.

CLAIM FOR RELIEF

Caplin & Drysdale, Chartered, therefore, requests that the Order of Forfeiture entered by this Court on May 17,

1985 be amended so that, among other things, it does the following:

(a) Authorizes Caplin & Drysdale, Chartered to receive the \$25,480.00 which was held in escrow at the National Bank of Commerce in partial payment of amounts owed to it by Reckmeyer;

(b) Authorizes Caplin & Drysdale, Chartered to re-deposit the two checks totalling \$10,000.00 described in paragraphs 3 and 4 above and directs the two banks upon whom those checks are drawn to process them for payment;

(c) Authorizes Caplin & Drysdale, Chartered to be paid \$161,477.96 for all services rendered and costs incurred in Reckmeyer's defense out of Reckmeyer's funds presently in the possession of the government or in the possession of third parties but frozen pursuant to the Court's restraining order of January 14, 1985 and the Order of Forfeiture of May 17, 1985.

Respectfully submitted,

CAPLIN & DRYSDALE, CHARTERED

/s/

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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CRIMINAL NO. 85-00010-A

UNITED STATES OF AMERICA,
Plaintiff,

v.

CHRISTOPHER F. RECKMEYER II, *et al.,*
Defendants.

GOVERNMENT'S CONSOLIDATED RESPONSE TO
PETITIONS FOR RELIEF FROM FORFEITURE

COMES NOW the United States of America, by its attorney, Elsie L. Munsell, United States Attorney for the Eastern District of Virginia; Karen P. Tandy, Assistant United States Attorney, and Kent S. Robinson, Assistant United States Attorney, and responds to and opposes, in whole or in part, the petitions for relief from forfeiture filed by the following claimants:

- (1) Nancy Reckmeyer.
- (2) William J. Reckmeyer, Sr.
- (3) Patrick R. Hendry and Reginald G. Miller.
- (4) Caplin and Drysdale, Chartered.
- (5) Charles and Jean Lane.
- (6) William Pruzan.

These claims, which will be more fully explained in the attached memorandum of points and authorities, represent the only claims on which there is a substantial dispute between the parties. For the reasons set forth in the attached memorandum of points and authorities, the United

States respectfully submits that the remaining claims should be denied.

Respectfully submitted,
ELSIE L. MUNSEL
UNITED STATES ATTORNEY

By: /s/ _____
Karen P. Tandy
Assistant United States Attorney

/s/ _____
Kent S. Robinson
Assistant United States Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

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 - C. Charles and Jean Lane
 - D. Patrick R. Hendry and Reginald G. Miller

I. FACTUAL INFORMATION

On January 9, 1985, Christopher and Robert Reckmeyer were indicted on a variety of charges including Continuing Criminal Enterprises (CCE), in violation of 21 U.S.C., Section 848. The indictment sought forfeiture of any profits obtained by the Reckmeyers from their participation in the enterprise, and any property which afforded a source of influence over the enterprise. Numerous specific assets, including most of those for which petitions have been filed, were set forth in the indictment.

On March 13, 1985 Robert Reckmeyer pled guilty to the CCE charge, among others, and agreed to forfeiture of the proceeds of his enterprise. On April 26, 1985, Robert

Reckmeyer signed a consent decree of forfeiture, which resulted in this court ordering the forfeiture of all his properties and assets. Claims have now been made, and are pending before this Court, by William J. Reckmeyer, Sr. on assets described in that consent decree and order as follows:¹

.....

- 12. A 1971 Ford Pickup Truck, vehicle identification number F26HEEJ3709;

.....

- 15. Jumbo Certificate of Deposit number C-2203 at the First Commonwealth Savings and Loan, Alexandria, Virginia . . .;

II. STATUTORY BACKGROUND

A. Forfeiture Under the Comprehensive Crime Control Act of 1984

The forfeiture provisions of the Comprehensive Crime Control Act of 1984 were enacted to enhance the use of forfeiture as a tool in combatting drug trafficking. S. Rpt. No. 225, Comprehensive Crime Control Act of 1983, 98th Cong., 1st Sess. 191 (1983) (copy attached) [hereinafter *Legislative History*]. The Legislative History of the statute cogently states:

Today, few in the Congress or the law enforcement community fail to recognize that the traditional criminal sanctions of fine and imprisonment are inadequate to deter or punish the enormously profitable trade in dangerous drugs which, with its inevitable attendant viol-

¹ William J. Reckmeyer, Sr. has also made a claim that he is owed reimbursement for expenses incurred on behalf of Robert Reckmeyer's wife and children, without identifying any asset from which this claim should be paid.

ence, is plaguing the country. Clearly, if law enforcement efforts to combat racketeering and drug trafficking are to be successful, they must include an attack on the economic aspects of these crimes. Forfeiture is the mechanism through which such an attack may be made.

Id.

The purpose of the new statute was to cure some ambiguities and weaknesses of forfeiture law, by improving the procedures applicable in such cases. *Id.* at 192. The most fundamental change enacted by the new statute was the codification of what was known as the "relation-back" principle. Section 853(c), of Title 21, states that "all right, title, and interest [in forfeited property] vests in the United States upon the commission of the act giving rise to forfeiture under this section." The application of this principle to forfeiture cases was first recognized and approved in *United States v. Stowell*, 133 U.S. 1, 17-18 (1890). The 1984 statute removed any doubt that this principle was applicable in criminal forfeiture cases.

A necessary consequence of the relation-back principle is the voiding of any and all transfers of forfeitable assets by the defendant to third parties. The statute also encompasses this principle, stating "Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States. . . ." This provision codifies the rule, again first recognized in *Stowell*, that forfeiture "avoids all intermediate sales and alienations, even to purchasers in good faith." *United States v. Stowell*, *supra*, 133 U.S. at 18.

Congress explicitly stated its reasons for incorporating the relation-back principle in criminal cases. It noted that preconviction transfers of assets, if allowed to frustrate forfeiture, would dramatically undercut the use of forfei-

ture as a crime fighting tool. *Legislative History, supra*, at 195-196. It noted that such frustrating transfers were avoided in civil cases through the use of the relation-back principle, and expressly sought to apply that principle in the criminal context. *Id.* at 196, 200-201.

The forfeiture prescribed by the 1984 act is essentially automatic. Property is forfeitable if it constitutes a defendant's proceeds from a drug business, is used to facilitate that business, or affords a source of control over a continuing criminal enterprise. 21 U.S.C. § 853(a). Once property falls within one of these categories, it "shall" be forfeited by the court. As the factual introduction above establishes, the Reckmeyers' property fits these descriptions and has therefore already been forfeited by the court.

Once a forfeiture order has been entered, third parties may claim an interest in the forfeited property by filing a petition for relief with the court. 21 U.S.C. § 853(n). This section was enacted in recognition of the potentially harsh consequences of the relation-back principle on innocent persons. *Legislative History, supra*, at 207-208. The statute provides that certain interests in forfeited property, more fully discussed below, will be protected. 21 U.S.C. § 853(n). That is the sole and exclusive judicial remedy open to persons claiming an interest in forfeited property. 21 U.S.C. § 853(k).

B. Third Party Claims

Section 853(n) of Title 21 sets forth two circumstances in which a petitioner's interest in property will be protected:

(A) The petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant, or was superior to any right, title,

or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under the subsection; or

(B) The petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

The rights protected by this statutory section are obviously quite limited. It provides only for legal claims to property. Congress clearly stated that the administrative remission process "would remain the appropriate exclusive remedy for third parties who are asserting not a legal bases for relief, but rather more equitable grounds." *Legislative History, supra*, at 208.

1.) Scope of In Personam Forfeiture

Among the concerns about forfeiture law expressed by Congress was the fact that so many claims had to be handled civilly. *Legislative History, supra*, at 196. Because such litigation is *in rem*, it must be pursued in the district in which the property was located. The result was inefficient, multiple litigation. Congress clearly expressed its desire to allow for all forfeiture matters to be consolidated in the criminal proceeding. *Id.* at 197.

It therefore is apparent that Congress intended the *in personam*, criminal forfeiture embodied by the new statute to have the same reach as *in rem* jurisdiction. Surely Congress did not seek to make forfeiture more efficient by simply adding another layer of criminal proceedings which would then necessarily be followed by civil proceedings to reach other assets. That is precisely why the relation-back principle was incorporated into the statute.

Civil forfeiture law thus provides relevant authority to the present action. The principles of standing set forth in

civil forfeiture cases obviously are applicable to criminal cases. Congress did not intend for the court to allow a party standing to contest criminal forfeiture, when that individual would not have standing in the civil context. Similarly, when an individual's claim that he is an innocent owner of property would not prevail in the civil context, it should not fare any better in the criminal case.

• • •

B. Caplin and Drysdale, Chartered's, Claim for Attorney's Fees

Caplin and Drysdale, Chartered, a Washington, D.C. law firm, seeks release of Christopher Reckmeyer's funds to compensate the firm for representing Reckmeyer. Three separate claims are made. First, the firm asks to be allowed to cash two checks received from Reckmeyer, each in the amount of \$5,000, which bounced because of the Restraining Order. Second, the firm seeks to retain \$25,444.97 delivered to it at the time Reckmeyer turned himself in. Finally, the firm seeks a distribution of Reckmeyer's funds to cover the remainder of his outstanding legal fees, which presently total in excess of \$170,000.

The Government opposes this claim on two grounds. First, Caplin and Drysdale lacks standing to challenge the forfeiture, because it cannot claim a right, title or interest in the funds. Caplin and Drysdale cannot satisfy the statutory requirement that any interest they did obtain was without reasonable cause to believe the funds were subject to forfeiture.

1. Standing

As noted above, an individual has no standing to challenge a forfeiture unless he can claim a "right, title, or interest in that property." 21 U.S.C. § 853(a)(6)(B). Caplin and Drysdale fails that first test.

Several courts have addressed the rights of innocent parties who hold checks on forfeited bank accounts. In

every instance, the court has held that the holders of such checks lack standing because they have no ownership or possessory interest in the deposits to the account. *United States v. Four Million, Two Hundred, Fifty Thousand Dollars*, 762 F.2d 895, 907 (11th Cir. 1985); *United States v. Sonal*, 573 F. Supp. 1126 (S.D.N.Y. 1983). These decisions rely on the Uniform Commercial Code for the proposition that a check is not an assignment, in law or equity, of an interest in the deposits of an account, unless the check is accepted by the drawee bank. The Virginia Code contains identical provisions. Va. Code §§ 8.3-409, 8.3-410. Indeed, one court specifically held that a check written to an attorney did not constitute an assignment of funds, and denied standing. *United States v. Four Million, etc.*, 762 F.2d at 907 n.27. Clearly Caplin and Drysdale do not have standing to contest the forfeiture of the bank accounts on which the checks were drawn.

Similarly, they do not have any right, title or interest in the general funds of Christopher Reckmeyer. There are numerous cases which hold that simple, unsecured creditors, do not have a sufficient ownership interest to contest the forfeiture of the funds of the debtor. *United States v. \$47,875.00 in U.S. Currency*, 746 F.2d 291 (5th Cir. 1984); *United States v. Five Hundred Thousand Dollars*, 730 F.2d 1437 (11th Cir. 1984); *United States v. \$3,799 in United States Currency*, 684 F.2d 674, 678 (10th Cir. 1982). Those principles apply to the funds of Christopher Reckmeyer.

The Government concedes the standing of Caplin and Drysdale to contest the forfeiture of the \$25,444.97 actually delivered to it by Reckmeyer.

2. Forfeitability

The exact basis for Caplin and Drysdale's claim for relief is unclear. They do not specifically state that they are "reasonably without cause to believe that the property was subject to forfeiture." This raises the possibility that they

are claiming that legitimate attorney's fees are not forfeitable. Both possible claims will be addressed.

a. Knowledge of Forfeitability

Caplin and Drysdale's petition states that Reckmeyer continuously represented to them that he was not involved in drugs. In addition, it states that they provided legal services in the good faith belief that he was not involved in drugs. Obviously, these statements stop short of claiming that they were without reasonable cause to believe Reckmeyer was involved in drugs, because such a claim would be ludicrous.

At the outset, it must be noted that any claim of ignorance by Caplin and Drysdale can only relate to the preindictment period. They were served, on January 14, 1985, with a restraining order giving them actual notice of the forfeitability of Reckmeyer's assets, including currency. (See ¶ 26 of Restraining Order, Exhibit D to Caplin and Drysdale's petition.) Clearly they were actually aware of the forfeitability of the currency subsequently delivered to them by Reckmeyer, and of the other assets against which they made a claim for subsequent services. Hence, they can only claim ignorance for the fees and expenses owed prior to indictment. *United States v. Raimondo*, 721 F.2d 476, 478 (4th Cir. 1984) (attorneys put on notice by indictment of forfeitability of assets).

The Court need not intrude into the confidential communications between Caplin and Drysdale and their client to determine the firm's knowledge. The external circumstances create a clear enough picture. Firm lawyers were advised several times about the existence and scope of the investigation. Firm members, together with lawyers representing other targets, routinely debriefed grand jury witnesses such as Dan Rudicille, who implicated their client. The various lawyers representing targets apparently shared information. Certainly, Caplin and Drysdale was aware of

the civil forfeiture action brought against Robert Reckmeyer's assets, on the ground that they are drug proceeds.

b. Legal Fees

The clear proof that Caplin and Drysdale was aware of the forfeitability of Reckmeyer's assets, particularly after the indictment, reduces their claim to a legal issue: whether legal fees are forfeitable. This is an issue informed by prior case law, the language and history of the 1984 statute, and Sixth Amendment considerations.

i.) Prior Law

Legal fees have never been accorded different legal status than any other disbursement by an individual. See *United States v. Jeffers*, 532 F.2d 1101, 1105 (7th Cir. 1976) (compelled testimony as to legal fees "elicited no more than would have been elicited by introducing evidence that the defendant had bought a Rolls-Royce for cash"), *rev'd in part on other grounds*, 432 U.S. 132 (1977). Attorneys are treated as all other creditors. For example, taxpayers have not been allowed the release of funds subject to tax liens for the purpose of paying attorneys to fight the liens. *Illinois Redi-Mix Corp. v. Cayle*, 360 F.2d 848 (7th Cir. 1966); *Lloyd v. Paterson*, 242 F.2d 742 (5th Cir. 1957).

Similarly, claims by attorneys in the context of forfeiture proceedings have always been held to the same legal requirements as other claims. See *United States v. Four Million, etc.*, *supra*, 762 F.2d at 907 n.27 (attorney's claim to forfeited assets denied because inadequate assignment); *United States v. \$48,318*, *supra*, 609 F.2d at 214-215 (inadequate notice of assignment). Legal fees have never been exempted from forfeiture. In *United States v. Raimondo*, 721 F.2d 476, 478 (4th Cir. 1984), the Fourth Circuit ruled that the transfer of an asset to an attorney did not place it beyond forfeiture. Although the decision left open to the attorney the possibility of further challenge to the

forfeiture, *id.*, it nonetheless stands for the proposition that transfers of forfeitable property to attorneys do not hold an exalted place in forfeiture law. Similarly, in *United States v. Long*, *supra*, an asset transferred to attorneys pre-indictment, for payment of legitimate attorneys fees, was forfeited because the attorneys are well aware of its potential forfeitability. Finally, in *United States v. Bello*, 470 F. Supp. 723 (S.D. Cal. 1979), a defendant's attempt to exempt funds for attorney's fees from a restraining order was denied, despite a Sixth Amendment claim.

Given this legal context, Reckmeyer's funds would have been forfeited even before passage of the 1984 act.

ii.) The 1984 Statute

Application of the 1984 Statute has produced inconsistent judicial rulings. Courts have disagreed over whether Congress intended attorney's fees to be forfeitable, and whether attorney's fees fall within the subsection (B) provision for bona fide purchases.

No prior case has addressed the question in the present context. They all involved pre-conviction, pre-forfeiture attempts to release funds from restrained assets for representation in the criminal case. This is the first case in which a court has been asked to release proven drug proceeds to attorneys.

Each court to have addressed the subject seems to concede that the statute, literally construed, would reach attorney's fees. See *United States v. Badamenti*, 84 CR 36, slip op. at 3 (S.D.N.Y. July 10, 1985). Despite that apparent clarity, however, courts are troubled by the failure of Congress to expressly include attorney's fees in forfeitable assets. *Id.*, *United States v. Ianniello*, 85 CR 115, slip op. at 7-8 (S.D.N.Y. September 3, 1985). One court has seen this failure to refer to attorney's fees as an indication that Congress must not have intended to include them, *United States v. Badamenti*, *supra*, while

another finds this sufficiently ambiguous to require reference to the legislative history, *United States v. Ianniello*, *supra*. Both of these views ignore the substantial body of case law, cited above, which allowed for seizure of attorney's fees prior to the 1984 statute. Attorneys have never been treated as a separate class in forfeiture law, there was no reason for Congress to refer specifically to them.

Indeed, if one looks beyond the clear language of this statute, one of the first canons of statutory construction is that Congress is pressured to be aware of prior law, and to have adopted it absent a clearly stated departure. See *Cannon v. University of Chicago*, 441 U.S. 677, 696-98 (1979). In the present case, presumptions need not be indulged in. Congress actually cited to prior law with approval. In discussing how the relation-back principle should work, Congress cited to *United States v. Long*, *supra*, and described its holding by saying that property "remained subject to criminal forfeiture although transferred to the defendant's attorney." *Legislative History, supra*, at 200 n.28. Obviously, Congress was aware of and endorsed prior law, and recognized the implications of the relation-back principle to attorney's fees. The failure of this statute to make specific reference to attorney's fees is not the result of oversight, but rather the continuation of the legal philosophy, embodied in the case law above, that attorney's fees are subject to the same laws as other creditors. Those cases which have held attorney's fees outside the intent of Congress have simply ignored the citation to *Long*.

While ignoring the *Long* citation, several courts have turned to a preliminary House report on an earlier draft of a different forfeiture statute. See *United States v. Badamenti*, *supra*, at 6; *United States v. Rogers*, 602 F. Supp. 1332, 1347 (D. Col. 1985). Obviously, such legislative history is of far less informative value than the final report on the statute here employed. Yet two counts have latched onto the following phrase: "Nothing in this section is in-

tended to interfere with a person's Sixth Amendment right to counsel." *Id.* But the following sentence from that report, a sentence ignored by *Rogers*, places that quote in context: "The Committee . . . does not resolve the conflict in District Court opinions on the use of restraining orders that infringe on a person's right to retain counsel in a criminal case." H.R. Rep. No. 845, pt. 1, 98th Cong., 2d Sess. 19 n.1 (1984). Obviously, Congress was discussing only pretrial orders, which is not the issue here. Moreover, Congress clearly did not mean to abrogate the case law discussed above. *In re Grand Jury Subpoena (Simels)*, 605 F. Supp. 839, 849-50 n.14 (S.D.N.Y. 1985), *rev'd in part on other grounds*, ___ F.2d ___ (2d Cir. 1985) (reversed because of grand jury abuse).

In a final move to exempt attorney's fees, two courts have concluded that subsection (B), relating to bona fide purchases, was meant to void only sham transactions, and not ones in which there had been a legitimate exchange, such as for attorney's fees. *United States v. Ianniello*, *supra*; *United States v. Rogers*, *supra*, 602 F. Supp. at 1347. At best, these rulings are ill-considered and, at worst, amount to a rewriting of the statute. Congress voided all transfers in which the third party had "reasonable cause to believe" the property was forfeitable. Obviously, this reaches a broader range of transactions than simple shams. Congress clearly considered, much more clearly than these courts, which transfers it sought to void. To limit the statute to shams would clearly frustrate Congressional intent. *In re Grand Jury Subpoena (Simels)*, *supra*, 605 F. Supp. at 849 n.14.

In the Government's view the correct interpretation was made in *In re Grand Jury Subpoena (Simels)*, *supra*. The funds which the attorneys now seek to obtain do not, and never did, belong to Christopher Reckmeyer. One who enters into a transaction knowing of the potential for forfeiture cannot be said to be in an arms length position,

and deserves little sympathy. Congress' intent in broadening the forfeiture law clearly applies to attorneys:

Fees paid to attorneys cannot become a safe harbor from forfeiture of the profits of illegal enterprises. In the same manner that a defendant cannot obtain a Rolls-Royce with the fruits of a crime, he cannot be permitted to obtain the services of the Rolls-Royce of attorneys from these same tainted funds. . . . To permit this would undermine the purpose of forfeiture statutes, which is to strip offenders and organizations of their economic power.

This result is supported by a recent district court decision under the civil forfeiture statute. In *United States v. One Parcel of Land*, No. 85 C 4967 (N.D. Ill. July 8, 1985), the court found that it was without jurisdiction to exempt attorney's fees from forfeiture under that statute.

iii.) Sixth Amendment Considerations

The Sixth Amendment provides an equivalent right to both indigent and non-indigent defendants, the right to adequate assistance of counsel. See *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980). What the Sixth Amendment does not provide is a right of access to money for the purpose of hiring a lawyer. As the Court observed in *United States v. Rogers*, 471 F. Supp. 847 (E.D.N.Y. 1979), "[e]conomic realities impose one obvious limitation of the defendant's 'right' to be represented by a particular attorney." 471 F. Supp. at 851. Even more clearly, there is not constitutional right to use unlawfully obtained money for counsel. See *United States v. Jeffers*, 532 F.2d 1101, 1115 (7th Cir. 1976), *rev'd in part on other grounds*, 432 U.S. 132 (1977); *United States v. Raimondo*, 721 F.2d 476, 478 (4th Cir.), *cert denied*, 105 S.Ct. 133 (1984); *United States v. Long*, 654 F.2d 911, 915-17 (3d Cir. 1981); *United States v. Bello*, 470 F. Supp. 723, 725 (D. Col. 1979).

The Sixth Amendment does not give a defendant the right to pay his counsel with the proceeds of criminal activity. See *United States v. Raimondo*, 721 F.2d 476, 478 (4th Cir. 1983), *cert. denied*, 105 S.Ct. 133 (1984) (jury reasonably could have found that assets transferred to lawyer as attorney's fees "retained their character as profits subject to forfeiture"); *United States v. Long*, *supra*, 654 F.2d at 916-17 (Government can restrain allegedly forfeitable property transferred to attorney as payment); *United States v. Bello*, *supra*, 470 F. Supp. at 725. See also *United States v. Jeffers*, *supra*, 532 F.2d at 1115. These cases comport with the relation-back principle embodied in the new statute.

Sixth Amendment claims historically have not prevented forfeiture or other seizures of assets designated for legal fees.

In *United States v. Bello*, 470 F. Supp. 723 (S.D. Cal. 1979), the court upheld a restraining order entered pursuant to 18 U.S.C. § 1963 despite the defendant's contention that the order would deprive him from hiring an attorney and thereby violate his right to counsel. The court found that:

the proposed restraining order does not deprive [the defendant] of counsel, but only of the attorney of his choice. [He] will still be entitled to court-appointed counsel if he has no means to hire an attorney.

The Government will not oppose an application by any defendant for court-appointed counsel if the defendant submits an affidavit showing an amount of *unrestrained funds* that would qualify him under the Criminal Justice Act (CJA), 18 U.S.C. § 3006A. Moreover the court in its discretion can appoint counsel of the defendant's choice to the CJA panel so that such counsel can be assigned to the case. See *United States v. Ray*, 731 F.2d 1361 (9th Cir. 1984) (no issue of right of counsel raised where

defendant whose assets are restrained obtained court-appointed counsel of choice).

In analogous cases, courts have refused to grant defendants a constitutional right to use money that, while belonging to the defendant, had been properly restrained. In *United States v. Brodson*, 241 F.2d 107 (7th Cir.), *cert denied*, 354 U.S. 911 (1957), the Government had levied a jeopardy assessment against the defendant and then, a year later, indicted him for income tax evasion. The Government then proceeded in the criminal case without resolving the jeopardy assessment. The defendant claimed that his right to counsel was being violated because the jeopardy assessment and accompanying tax liens had deprived him of funds for his defense in the tax evasion case. The district court dismissed the indictment, but the Seventh Circuit Court of Appeals reversed the dismissal and rejected the defendant's Sixth Amendment and Fifth Amendment claims.

Of direct relevance to this case, the court found that a defendant who had effectively been rendered indigent by the Government's action had no greater right to funds for his defense than any other indigent:

[c]ounsel . . . seek to make a distinction between a simple case of an indigent defendant and the case of a 'defendant who has been rendered indigent by the state [sic], who is kept in this position by the state's refusal to have the defendant's tax liability determined by a court of law, and who, while in this position, is faced with losing his freedom in criminal prosecution for tax fraud.' The distinction is without validity.

241 F.2d at 111. See also *Illinois RediMix Corp. v. Coyle*, 360 F.2d 848 (7th Cir. 1966) (defendant has no due process right to release of funds that are subject to federal tax liens for purpose of hiring counsel to defend jeopardy assessment against him); *Lloyd v. Patterson*, 242 F.2d 742

(5th Cir. 1957) (defendant has no right to release of tax liens for purpose of hiring counsel in suit contesting deficiency assessment).

Just as a defendant in a tax evasion case has no Sixth Amendment right to the release of tax liens to pay for his defense a defendant in CCE case has no right to the release of forfeited assets to hire counsel of his choice. Under the forfeiture law, all right, title and interest in property subject to forfeiture vests in the Government upon the commission of the act giving rise to the forfeiture. The filing of an indictment with forfeiture allegations represents a determination that there is probable cause to believe that all right to the property alleged to be forfeitable has already vested in the Government. Defense counsel's position, that their clients have a Sixth Amendment right to use such property for the purpose of hiring the best lawyer such money can buy, is completely unjustified.

Nonetheless, three cases interpreting the new statute have been troubled by its Sixth Amendment implications and have construed the statute to not reach attorney's fees, rather than confront the constitutional issue. See *United States v. Ianniello*, *supra*; *United States v. Badalamenti*, *supra*; *United States v. Rogers*, *supra*. These cases have been troubled by two aspects of the potential forfeiture. First, they are concerned that defendants will not be able to obtain any counsel at all, even appointed counsel, because they will not be able to state that they are without funds. Second, they are concerned with the potential ethical problems for an attorney who must be concerned throughout his representation about the effect his own actions might have on his fees. The simple answer to both these questions is that an individual may hire counsel if he personally has funds—as opposed to funds for which the government has proper title—or he may have appointed counsel. Several of the defendants in the Reckmeyer case had appointed counsel and this court has

expressed its respect for them. The present operation of our legal system is premised on the adequacy of appointed counsel to represent any defendant. The Government recognizes its duty to pay for representation of defendants under the Criminal Justice Act; but disputes that it has an obligation to hire each defendant's counsel of choice, at fees several times the rate for appointed counsel.

Precisely this reasoning was applied by the court in *United States v. One Parcel of Land*, *supra*. The court found no Sixth Amendment violation when, as here, the defendant could have appointed counsel. *See also In re Grand Jury Subpoena (Simels)*, *supra*, 605 F. Supp. at 849-850 n.14.

Those cases discussing the limited right to counsel of one's choice do not support the defense. These cases hold that the court cannot deprive the defendant of the assistance of chosen counsel by unreasonably denying continuances, *see e.g., United States v. Burton*, 584 F.2d 485, 489 (D.C. Cir. 1978), *cert denied*, 439 U.S. 1069 (1979), or by disqualifying counsel absent sufficiently compelling reasons, *see e.g., United States v. Cunningham*, 672 F.2d 1064 (2d Cir. 1982), *cert denied*, 104 S.Ct. 2154 (1984), or by forcing counsel upon a defendant who seeks to represent himself, *see e.g., United States v. Babar*, 567 F.2d 192, 203 (2d Cir.), *cert denied*, 434 U.S. 872 (1977). None of these cases suggests that the Constitution requires that the Government forego its statutory right to restrain a defendant's property solely because such restraints might make it more difficult for the defendant to hire a lawyer.

Once again, the Government urges that the proper resolution of this matter was reached in *In re Grand Jury Subpoena (Simels)*, *supra*, 605 F. Supp. at 849-850 n.14. The court stated that defendants had no right to spend money which was not theirs on a lawyer, and that appointed counsel could adequately represent the defendant. In addition, the court found no constitutional violation sim-

ply because a defendant was deprived from hiring the "Rolls-Royce" of lawyers.

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CRIMINAL NO. 85-10-A

UNITED STATES OF AMERICA
v.

CHRISTOPHER RECKMEYER
(CAPLIN & DRYSDALE),

Defendant.

The above-entitled matter came on to be heard in the United States District Court, Alexandria, Virginia, commencing at 9 A.M. on November 8, 1985.

BEFORE: THE HONORABLE JAMES C. CACHERIS,
PRESIDING UNITED STATES DISTRICT
JUDGE

APPEARANCES:

For Caplin & Drysdale:	Peter Lockwood
For The United States:	Kent Robinson

PROCEEDINGS

THE COURT: I'll go ahead and take up the Caplin-Drysdale matter.

MR. LOCKWOOD: May it please the Court, my name is Peter Lockwood. I'm a member of the firm of Caplin and Drysdale. I understand from Your Honor's previous comments that you have read the briefs in this case.

THE COURT: Yes, sir.

MR. LOCKWOOD: So I will not repeat the matters dealt with in our brief.

The government has filed a timely response to our papers this morning, and there are some points made in there that I think bear addressing in this context together with sort of an overall point that I'd like to make here.

In a sense, the government's attitude in this case could be sort of summed up by a comment that Judge Bryan made when we moved to lift the temporary restraining order that was entered barring transfer of all of Christopher Reckmeyer's assets so that our fees could be paid during the pendency of this criminal case.

Unfortunately for us, our client had pleaded guilty the day before that hearing took place, so Judge Bryan determined that we would have to await the proceedings that are presently pending in front of Your Honor to raise this issue.

But in the initial stages, he said in response to my partner, Mr. Moyer, introducing himself and saying what he was here on, he said, you have violated one of the cardinal rules in representing a defendant, and that is to get your fee up front.

In fact, Your Honor, it wouldn't have made any difference in this case if we had gotten our fee up front, although the government attempts to set up a structure where they may imply that that's the case.

For openers, with respect to their standing argument, which is that we're just a creditor, I think it lies with ill grace in the mouth of the government to make that argument vis-a-vis Caplin and Drysdale when the only reason that Caplin and Drysdale is not in possession of its attorney's fees is that the government ex parte, at a time when they knew they were going to indict Mr. Reckmeyer, at a time when they knew Mr. Reckmeyer was represented by Caplin and Drysdale, got an injunction which barred Mr. Reckmeyer from spending any money on anything.

Indeed, the T.R.O. in this case covered things that were not sought to be forfeited in the indictment, specifically currency.

So under the government's approach to this matter, which I might add would apply in any criminal case in which there were forfeiture potentials, any drug case, C.C.E. case, R.I.C.O. case, the government comes in, gets an ex parte T.R.O., ties up all the defendant's assets, and then when the judge says, okay, you've got to come in under 853(N)(6) and litigate whether you're a bona fide purchaser without reasonable cause, says "gotcha," you know, you're a creditor, you didn't get paid your fees up front, you don't have any standing.

I think that frankly borders on being outrageous and certainly is not something that the Court should read this statute to permit the government to do, to not even give a lawyer his day in court on this issue.

With respect to the merits, Mr. Robinson, in a previous comment on the subject of in rem, in personam—which has been argued at some length, Your Honor, I'm not going to repeat it—said, well, everybody is relying on the in rem cases, there aren't any in personam cases.

I just want to assure the Court that I'm not relying on any in rem case. I'm distinguishing in rem cases, I may be implying that they're wrongly decided, but I am not relying on them.

I am relying on a couple of in personam cases cited in our brief, *Rogers v. Enyello* (phonetic), which were decided contrary to Mr. Robinson's assertions that there are no cases under that statute. These cases were under this statute, although I will concede they were not in an (N)(6) proceeding because they took place in the preliminary pre-conviction stage of the case and had to do with the whole issue of the T.R.O.

The real issue, Your Honor, is whether or not this statute will be interpreted by this Court in such a way as to permit the government, by accusation alone, to reduce a defendant prior to conviction to indigency, because that is the intent and reading of the statute they give.

Had we been paid our fees, under (N)(6) and the government's arguments, every dollar of them would still be forfeitable. We would be a third party. I believe the government concedes we are a bona fide purchaser, although that term as applied to a lawyer getting paid for legal work is not very felicitous. But they say we can never satisfy the burden of showing that we are without reasonable cause to believe that the proceeds are forfeitable.

Basically we agree with that. We don't think we could ever satisfy that. But we are representing this man in a criminal investigation and subsequently after an indictment. If we have to show that we have no notice that he's been accused by the government—

THE COURT: I understand your argument.

MR. LOCKWOOD: So our burden this morning—and I have to concede to some extent, I guess, it's a heavy burden—is to convince Your Honor that this statute is not intended to apply at all to our situation. We can't satisfy the (N)(6) burden, which is why we haven't asked for an evidentiary hearing.

The reason that we believe that the statute is not intended to apply, and I might add the reasoning adopted by the Courts in *Rogers v. Enyello*, is that the basic purpose of the forfeiture statute is to, as somebody else put it, deprive the defendant of his ill-gotten gains.

This is a criminal penalty. They can put labels on it about in personam forfeiture and attempt to bring to bear several hundred years of English legal history and stuff like that, but the fact of the matter is that the government

doesn't have any interest at all in Mr. Reckmeyer's property until after he's been convicted.

The relation back doctrine, under which the government could go back and collect legal fees, for example, paid to Caplin and Drysdale from the beginning of time practically, is a fiction. Why was it in the statute? As a fiction.

It was in the statute because there were sham transactions, transactions that weren't shams but were for less than fair market value. There were situations like what appeared to be presented in the *Ray Mundo* (phonetic) case when lawyers were not getting paid fees, they were being paid airplanes, the airplane happening to have been arguably used in drug dealings.

The congress decided that they didn't want to allow the defendant to retain any economic base, any assets, after a conviction for the enumerated offenses.

I suggest to Your Honor that if we get paid in this case, that's not going to create any economic base for Christopher Reckmeyer. And I don't understand the government to argue differently.

The government's argument really borders on simple-minded. I mean, they come in and they say, well, under the statute, Your Honor, it relates back to the time the offenses were committed so we are asking to get paid with the government's money.

Then they start arguing about under the criminal justice act, we wouldn't be entitled to be paid anything but minimal legal fees as though we were here under the C.J.A. making a fee application.

It wasn't the government's money.

THE COURT: I understand. Your time is almost up, sir.

MR. LOCKWOOD: The only other couple of points that I could address that relate specifically to the government's

brief here, Your Honor, are, number one, they suggest that we should be asked to carry a burden of proving that the forfeited assets of Christopher Reckmeyer represent our only chance of being paid legal fees.

If the government, with the plea agreement, the man in jail, and all its resources, represents to this Court that they don't think they have found all of Christopher Reckmeyer's assets, how do they think Christopher Reckmeyer's lawyers, bound by attorney-client privilege, are going to institute some sort of proceeding which is going to enable us to find assets that the government hasn't found? That's preposterous.

Secondly, because one of my partners in the initial claim filed in this case asserted that we didn't know until the indictment of the extent of the allegations about Mr. Reckmeyer's drug dealings, that that shows that we really didn't have any unique knowledge and basically that it would have been fine for us to have been removed from the case and brought new counsel in.

In fact, Mr. Reckmeyer was charged with and pleaded guilty to at least one tax count which was what we were hired to defend from the beginning. And secondly, as shown by the fee petition in our brief, most of the fees that were generated after the time for which we're seeking payment was because we were working with Mr. Reed, his counsel that was experienced in drug matters, because we had gotten a lot of familiarity about the financial—

THE COURT: Your time is about up. We've got a lot of people to hear. I'm going to take it under advisement. I've read your brief. Okay. Go ahead, Mr. Robinson.

MR. ROBINSON: Thank you, Your Honor. I'll just very briefly respond to just a few points.

First, the restraining order that was entered in this case was authorized by statute. All it really does is maintain the status quo until the rights of the third party can be

determined. I think it's inappropriate to characterize that as the government badgering people on accusations alone. That's obviously not the purpose or the actual facts of what happened.

Secondly, I think it's inaccurate to say that it wouldn't have made a difference if Caplin and Drysdale got their fees up front. In fact, the government has not sought to forfeit the fees—

THE COURT: You all seem to question the reasonableness of the fees too, don't you?

MR. ROBINSON: Not with Caplin and Drysdale, Your Honor. That claim was raised with one of the other petitioners.

The only point I made about the amount of the fees was simply that I said that ultimately the question is not whether or not the government has to hire a lawyer for Christopher Reckmeyer. It's a question of how much they have to pay him. Congress has set out the amounts they think are appropriate.

THE COURT: Do you want to apply the criminal justice act rights to private lawyers?

MR. ROBINSON: I think that might be appropriate, Your Honor.

THE COURT: Well, then there's going to be a lot of lawyers on welfare around here if I start doing that.

MR. ROBINSON: Your Honor, I think those are concerns that Congress has to take into consideration. I think the question is what power the Court has gotten from Congress in this sort of a situation.

THE COURT: Some lawyers never handle a criminal case. They don't handle them at all. Some just never do it at all.

MR. ROBINSON: Of course, Your Honor, I understand that.

THE COURT: There may be a small number of the bar, a small percentage that get buried with this representation.

MR. ROBINSON: I understand the difficulties of the equities of the situation, Your Honor, but I think nonetheless the question comes down to what Congress intended the Court to do and what Congress gave the Court the power to do.

THE COURT: All right.

MR. ROBINSON: And I think it's pretty clear that Congress did not write in an exception for attorney's fees in forfeitable property. And that really is the government's point, Your Honor.

THE COURT: All right. I'll give you one minute if you want to respond to that.

MR. LOCKWOOD: Nothing further, Your Honor. Thank you.

THE COURT: All right. Thank you.

(The above matter was concluded.)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

CRIMINAL NO. 85-00010-A

UNITED STATES OF AMERICA
v.

CHRISTOPHER F. RECKMEYER, II, *et al.*
(Caplin & Drysdale Chartered, Petitioner)

ORDER

In accordance with the accompanying Memorandum Opinion, it is hereby

ORDERED:

(1) that the Orders of Forfeiture of March 14, 1985, May 17, 1985, and June 5, 1985, are AMENDED to reflect that the firm of Caplin & Drysdale has a legal right, title, and interest in the sum \$170,512.99 out of the forfeited assets of Christopher Reckmeyer;

(2) that the Clerk shall forward certified copies of this Order to all counsel of record.

Date: 3/27/86
Alexandria, Virginia

/s/
United States District Judge

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

November 7, 1988

Mr. Peter Van N. Lockwood
One Thomas Circle, N.W.
Suite 1100
Washington, DC 20005

Re: Caplin & Drysdale, Chartered, v. United States
No. 87-1729

Dear Mr. Lockwood:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is granted. The case is set for oral argument in tandem with No. 88-454, United States v. Monsanto.

Very truly yours,

Joseph F. Spaniol, Jr., Clerk